

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
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MEETING

IN THE MATTER OF:

District Falafel I, LLC
t/a Amsterdam Falafelshop Protest
1830 14th Street, NW Hearing
Retailer DR - ANC-2B
License No. 93449
Case #14-PRO-00009

(New Application)

April 9, 2014

The Alcoholic Beverage Control Board met in the Alcoholic Beverage Control Hearing Room, Reeves Building, 2000 14th Street, N.W., Suite 400S, Washington, D.C. 20009, Chairperson Ruthanne Miller, presiding.

PRESENT:

RUTHANNE MILLER, Chairperson
NICK ALBERTI, Member
DONALD BROOKS, Member
HERMAN JONES, Member
MIKE SILVERSTEIN, Member
HECTOR RODRIGUEZ, Member
JAMES SHORT, Member

ALSO PRESENT:

ERIN MATHIESON, ABRA Investigator

P-R-O-C-E-E-D-I-N-G-S

(4:55 p.m.)

CHAIRPERSON MILLER: Okay. On to the next case. Are they here? So we're ready to roll right in, right? Okay.

The last case on our calendar is Case No. 14-PRO-00009, Amsterdam Falafelshop located at 1830 14th Street, N.W., License No. 93449, in ANC-2B. This is a new application.

MR. O'BRIEN: I'm sorry, has the case been called?

CHAIRPERSON MILLER: Yes.

MR. O'BRIEN: Okay. I'm Stephen O'Brien for the licensed applicant and I'm accompanied by Dane Cherry, spelled the same way as in the fruit, who is the applicant managing.

CHAIRPERSON MILLER: Okay.

MS. STERLING: Joan Sterling representing Shaw-Dupont Citizens Alliance, the protestant.

MR. FERRIS: Elwyn Ferris with the

1 Shaw-Dupont Citizens Alliance.

2 CHAIRPERSON MILLER: Okay. Great.
3 All right. So I know you all are familiar
4 with the process here, so I don't have to go
5 through that.

6 Can each of you just tell me how
7 many witnesses you are going to have today?

8 MR. O'BRIEN: That begs a
9 question --

10 CHAIRPERSON MILLER: Okay.

11 MR. O'BRIEN: -- I have as a
12 preliminary matter.

13 CHAIRPERSON MILLER: Um-hum, okay.

14 MR. O'BRIEN: May I address it?

15 CHAIRPERSON MILLER: Sure,
16 absolutely.

17 MR. O'BRIEN: All right. I am
18 moving -- I'm not moving that the Board
19 dismiss the protest. I am moving that the
20 Board prohibit the protestants from presenting
21 witnesses or documentary evidence. And the
22 reason I'm doing that is because of the

1 content of the protestant's Protest
2 Information Form filed last week, which all
3 parties to these proceedings are required to
4 file.

5 And the applicant's Protest
6 Information Form identified witnesses as local
7 residents and neighbors, SDCA board members,
8 without any names. In other words, it said
9 they are calling people.

10 With respect to documentary
11 evidence, it says charts, photos, maps,
12 documents, reports and supporting documents.
13 In other words, stuff.

14 CHAIRPERSON MILLER: Um-hum.

15 MR. O'BRIEN: That is not what a
16 Protest Information Form is intended to
17 illicit and it's not what has been acceptable
18 to the Board in the past. And for that
19 reason, for failure to comply with the Board's
20 requirements regarding filing a Protest
21 Information Form, answering the questions on
22 the form substantively, I move that the

1 protestants be barred from presenting
2 witnesses or documentary evidence.

3 MR. FERRIS: If I may speak to
4 that issue?

5 CHAIRPERSON MILLER: Hold on a
6 second. I just want to clarify. And you are
7 including as a witness the party itself?

8 MR. O'BRIEN: Say again?

9 CHAIRPERSON MILLER: Are you
10 including in your broad brush the party itself
11 as a witness?

12 MR. O'BRIEN: Well, the party --

13 CHAIRPERSON MILLER: Parties can
14 always be a witness, correct?

15 MR. O'BRIEN: The Shaw-Dupont
16 Neighborhood Alliance, that's the distinction
17 between not moving to dismiss the protest.

18 CHAIRPERSON MILLER: Okay.

19 MR. O'BRIEN: But saying that they
20 should not be entitled to present evidence.

21 CHAIRPERSON MILLER: So what I'm
22 asking you --

1 MR. O'BRIEN: Well, I listed in my
2 Protest Information Form Mr. Cherry and
3 another witness. And I listed on the Board's
4 documents -- Exhibit Sheet those exhibits we
5 are going to present.

6 The protestant in this case did
7 none of that. Simply said people and stuff.

8 CHAIRPERSON MILLER: Okay. I just
9 wanted to see how broad your motion was.

10 MR. O'BRIEN: That doesn't mean
11 they cannot challenge the testimony of Mr.
12 Cherry on behalf of the -- as far as
13 presenting affirmative evidence, they have not
14 satisfied the requirement that they say at
15 least a week in advance will be what?

16 CHAIRPERSON MILLER: Okay. Mr.
17 Ferris, you are going to address this?

18 MR. FERRIS: Yes.

19 CHAIRPERSON MILLER: Okay.

20 MR. FERRIS: I have been involved
21 in more protests right here than I care to
22 remember, but I have filled out a number of

1 Protest Information Forms in the past, all of
2 them have been filled out in pretty general
3 terms. It's very easy for the applicant's
4 attorney to know to list his client. He has
5 his client. We don't have witnesses at the
6 time we go into a protest.

7 We never expected to find
8 ourselves in this position until the Status
9 Hearing. And so to ask us to supply the Board
10 with a list of witnesses, we have to work to
11 get witnesses. We -- it was what two weeks
12 ago that we were here at the Status Hearing?

13 CHAIRPERSON MILLER: The rule is
14 seven days, so by seven days. Seven days in
15 advance of the hearing is what the rule says.

16 MR. FERRIS: So how much time did
17 that give us before -- between the Status
18 Hearing and --

19 MEMBER SILVERSTEIN: 10 days.

20 MR. FERRIS: -- seven days prior
21 to the Protest Hearing? That's not ample time
22 to put a case together.

1 CHAIRPERSON MILLER: Do you have
2 witnesses today?

3 MR. FERRIS: Yes, we have one
4 witness.

5 MS. STERLING: Yes.

6 MR. FERRIS: I'll let Ms. --

7 CHAIRPERSON MILLER: Okay.

8 MS. STERLING: Yes. We have one
9 witness and a number of statements from other
10 witnesses to avoid wasting the Board's time
11 with repeated testimony, so we have the signed
12 statements from the other witnesses to enter
13 in. We have a list of exhibits to present and
14 we can give you the exhibit list, the exhibits
15 themselves.

16 And when hearings -- when the
17 hearing time changes happen, it also impacts
18 residents that we have lined up to testify, so
19 it makes the residents have to run around and
20 find other available witnesses, so that's also
21 a problem that impacts residents.

22 CHAIRPERSON MILLER: Okay. I

1 mean, the Board may want to talk about this,
2 but before that I do want to say that what I
3 say in the instructions are that you need to
4 provide your exhibits and identify your
5 witnesses seven days ahead of time. And I
6 think that you get that as well in written
7 instructions.

8 But then we said if you don't,
9 then we have to make a determination that they
10 may be excluded from evidence from the record
11 upon a finding that the opposing party has
12 been prejudiced or there has been no good
13 cause for the failure to submit or identify
14 them.

15 So you are just going to give Mr.
16 O'Brien a list of exhibits right now, correct?
17 He hasn't seen them?

18 MS. STERLING: We can give Mr.
19 O'Brien a list of the exhibits and the Board
20 and also the exhibits themselves, because we
21 were copying them.

22 CHAIRPERSON MILLER: Okay.

1 MS. STERLING: The seven, for the
2 seven members.

3 CHAIRPERSON MILLER: Okay. So and
4 others can speak to this. My feeling is that
5 I would want to see what that is and have you
6 speak to -- Mr. O'Brien speak to whether you
7 are prejudiced by not having had these
8 exhibits in advance. By looking at exactly,
9 you know, what is on the list.

10 MR. O'BRIEN: Of course, I won't
11 know that until I see them.

12 CHAIRPERSON MILLER: Until you see
13 the exhibits?

14 MR. O'BRIEN: Yes, exactly.

15 CHAIRPERSON MILLER: Right. I
16 mean --

17 MR. O'BRIEN: I don't know what
18 they are and I don't know who the witnesses
19 are.

20 CHAIRPERSON MILLER: Right.

21 MR. O'BRIEN: And this proposition
22 that the need to appear at a hearing comes as

1 a surprise, we had a mediation on March 7th.
2 Of course, I will not tell you what was
3 discussed at the mediation.

4 CHAIRPERSON MILLER: Okay.

5 MR. O'BRIEN: Because we are not
6 allowed to.

7 CHAIRPERSON MILLER: Okay.

8 MR. O'BRIEN: But the mediation
9 failed. So the protestant has been aware
10 since March 7th --

11 CHAIRPERSON MILLER: Right.

12 MR. O'BRIEN: -- that this was
13 heading for a Protest Hearing.

14 CHAIRPERSON MILLER: Right. So
15 one of the questions is is there good cause as
16 to why you couldn't have filed this in a
17 timely manner or identified your witness seven
18 days ago?

19 MS. STERLING: Yes, the change in
20 the time made us have to solicit all our
21 witnesses to see their availability for the
22 second time and we have one witness that is

1 here today to do that and then the letters
2 from other witnesses.

3 MR. O'BRIEN: Well, we're
4 certainly not going to consider letters from
5 witnesses, because I can't --

6 CHAIRPERSON MILLER: Well --

7 MR. O'BRIEN: -- cross-examine a
8 piece of paper.

9 CHAIRPERSON MILLER: The change in
10 what time? What's the change in the time?

11 MS. STERLING: From 1:30 to 4:30.

12 CHAIRPERSON MILLER: From 1:30 to
13 4:30. Okay. And you knew that when?

14 MR. FERRIS: I couldn't speak with
15 certainty. Within, I would say, the last week
16 maybe.

17 CHAIRPERSON MILLER: So you are
18 saying this witness wasn't available at 1:30,
19 but is -- was available at 4:30?

20 MR. FERRIS: We had a witness who
21 was leaving town this evening and was
22 available at 1:30, but is not available now.

1 CHAIRPERSON MILLER: This -- the
2 witness you want to offer?

3 MS. STERLING: The current witness
4 is available now, but wasn't available
5 previously.

6 CHAIRPERSON MILLER: Okay.

7 MR. O'BRIEN: Madam Chair, if the
8 witness said was Joe Smith, but Joe Smith was
9 leaving town and they wanted to substitute Bob
10 Jones for Joe Smith --

11 CHAIRPERSON MILLER: Um-hum.

12 MR. O'BRIEN: -- that would be an
13 entirely different argument. But here is just
14 people.

15 CHAIRPERSON MILLER: Okay. Is
16 this a local resident?

17 MS. STERLING: No.

18 CHAIRPERSON MILLER: Okay. Okay.
19 Is it a member of your board?

20 MS. STERLING: No.

21 MR. FERRIS: No.

22 CHAIRPERSON MILLER: No. Okay.

1 Well, so, Mr. O'Brien, why don't you say why
2 you are prejudiced by not knowing who the
3 witness is ahead of time.

4 MEMBER ALBERTI: Can we -- before
5 we ask Mr. O'Brien that question, can we find
6 out what the witness is going to testify to?
7 In what area? I mean, what are they going to
8 touch on?

9 MS. STERLING: They will testify
10 to the -- what they have observed and the
11 impact of what they have observed from this
12 business on the area where they live.

13 MEMBER ALBERTI: Okay.

14 MEMBER SILVERSTEIN: Can you be a
15 little more specific as to -- well, are you
16 talking about 14th Street or the other
17 Amsterdam Falafel or what?

18 MS. STERLING: No, from this area.
19 From this area. It's a resident who lives
20 nearby the business.

21 MEMBER SILVERSTEIN: Okay.

22 MEMBER ALBERTI: Okay. And the

1 testimony is it impacts what, transportation,
2 peace, order and quiet?

3 MS. STERLING: Peace, order and
4 quiet.

5 MEMBER ALBERTI: Property values?
6 What? Those are the three standards.

7 MS. STERLING: And filed on peace,
8 order and quiet and hours.

9 MEMBER ALBERTI: Okay. Peace,
10 order and quiet.

11 MS. STERLING: We can certify it.

12 MEMBER ALBERTI: Okay. Now, Mr.
13 O'Brien?

14 CHAIRPERSON MILLER: Wait a
15 second. Wait, before Mr. O'Brien, I just want
16 to follow-up on that. Are one of your going
17 to testify?

18 MR. FERRIS: We hadn't planned to
19 unless you --

20 CHAIRPERSON MILLER: So that's
21 your only witness?

22 MR. FERRIS: -- would require us

1 to --

2 MS. STERLING: Unless we are
3 required.

4 MR. FERRIS: -- rebut something.

5 CHAIRPERSON MILLER: Okay. That's
6 your only witness?

7 MS. STERLING: Yes.

8 CHAIRPERSON MILLER: Okay.

9 MR. FERRIS: Yes. But our case
10 was largely based on the presentation of
11 exhibits to make our case.

12 CHAIRPERSON MILLER: Okay. We
13 will get to the exhibits next. Okay. So if
14 you knew who it was, Mr. O'Brien, a week ago,
15 how would it be different for you? What's
16 your -- how are you prejudiced? How is your
17 client prejudiced?

18 MR. O'BRIEN: Well, if given the
19 name, I might have initiated contact with that
20 person to ask that person what their
21 particular concerns were and what the
22 establishment could possibly do to address

1 those concerns or to mitigate the impact, but
2 now I'm punching in the dark.

3 CHAIRPERSON MILLER: Okay. Any
4 other questions on that topic? Can we -- will
5 you hand a copy of the exhibit list and
6 exhibits?

7 MS. STERLING: Yes, would you like
8 them?

9 CHAIRPERSON MILLER: Well, can
10 somebody go get it? We should have a copy and
11 Mr. O'Brien should have a copy to determine
12 the same issue.

13 MS. STERLING: Do you physically
14 want the exhibits?

15 MEMBER ALBERTI: Yes.

16 CHAIRPERSON MILLER: Yes. Do you
17 have a few copies? Thank you.

18 MS. STERLING: Sure.

19 CHAIRPERSON MILLER: Okay.

20 MR. O'BRIEN: Madam Chair, I
21 suggest the Board should not view exhibits
22 until they are received in evidence.

1 CHAIRPERSON MILLER: Okay.

2 MR. O'BRIEN: All right. And I
3 note that I'm looking at Exhibit 5 through 8
4 are letters. The Administrative Procedure Act
5 is clear that a party is entitled to full and
6 fair opportunity for cross-examination. I
7 cannot cross-examine a piece of paper. Those
8 letters are not admissible.

9 CHAIRPERSON MILLER: Okay. Do you
10 have anything further on that, because, you
11 know, we certainly get into hearsay and all
12 that in administrative hearings, though that's
13 not admitted in Court. And we give it less
14 weight. Do you have authority that we can
15 never look at letters, I would like to hear
16 it, because --

17 MR. O'BRIEN: No.

18 CHAIRPERSON MILLER: -- I know we
19 have.

20 MR. O'BRIEN: The --

21 CHAIRPERSON MILLER: But I
22 understand.

1 MR. O'BRIEN: -- authority is in
2 the Administrative Procedure Act and I know
3 the old cite was DC Code 15 1-1509, which says
4 that a party is entitled to full and fair
5 opportunity for cross-examination as to
6 evidence. Okay. Now, that's a paraphrase.

7 CHAIRPERSON MILLER: Um-hum, yeah.

8 MR. O'BRIEN: Okay. I know with
9 the recodification it was -- it has a
10 different number now, but it's in the
11 Administrative Procedure Act. I'm sure staff
12 could pull it quickly, if the Board wanted it.

13 So what we now have, apparently,
14 is letters being passed up to the Board, which
15 I don't think the Board should be looking at.

16 CHAIRPERSON MILLER: Oh, they are
17 not being -- we don't have them.

18 MEMBER SILVERSTEIN: We have a
19 list.

20 CHAIRPERSON MILLER: Oh, the staff
21 may have it.

22 MR. O'BRIEN: Oh, staff might.

1 CHAIRPERSON MILLER: No, we don't
2 any of the exhibits.

3 MR. O'BRIEN: Let me point out one
4 other issue here.

5 CHAIRPERSON MILLER: Okay.

6 MR. O'BRIEN: I see that Exhibit
7 No. 3 is Commissioner Noah Smith's Moratorium
8 testimony. Whether that is relevant and
9 admissible is a whole other issue, but why
10 would they have Commissioner Smith's
11 Moratorium testimony as an exhibit? I'll tell
12 you why, because our Protest Information Form
13 listed Commissioner Smith as a witness.

14 MS. STERLING: Actually, that's
15 not why we have it, because --

16 CHAIRPERSON MILLER: Okay. Wait a
17 second. You can respond -- one at a time.

18 MS. STERLING: -- he is on the
19 list.

20 CHAIRPERSON MILLER: One at a
21 time. Ms. Sterling?

22 MS. STERLING: I have it because

1 it's relevant.

2 MEMBER ALBERTI: You do not have
3 the floor, ma'am.

4 CHAIRPERSON MILLER: Okay.

5 MR. O'BRIEN: That's the unfair
6 advantage. We play by the rules.

7 CHAIRPERSON MILLER: Okay. I want
8 to ask you all though why you -- when we have
9 instructed that you submit these seven days in
10 advance, that it's not until today that you
11 are submitting the exhibits. There is --
12 that's the whole point. There is a
13 disadvantage. There is a surprise factor that
14 we are trying to avoid.

15 So what is your good cause for not
16 having submitted these exhibits until right
17 this minute at the hearing?

18 MS. STERLING: Um, we have never
19 been in a position where we had to do it ahead
20 of time. This tends to be the standard
21 practice of when we have done our cases. And
22 so we had never been informed that this was

1 not acceptable.

2 CHAIRPERSON MILLER: Did you go to
3 the Status Hearing where I read the
4 instructions?

5 MS. STERLING: Yes.

6 CHAIRPERSON MILLER: Okay.

7 MS. STERLING: In the past. I
8 mean, this -- and I suspect it's because the
9 counsel never raised that as an issue in front
10 of the Board, but so this is kind of news to
11 us that those kind of broad terms are not
12 acceptable.

13 Now, you know --

14 CHAIRPERSON MILLER: Okay. I see
15 what you are saying. You thought you -- you
16 submitted it seven days ahead of time, but you
17 weren't specific.

18 MS. STERLING: Right.

19 CHAIRPERSON MILLER: Right.

20 MS. STERLING: We weren't
21 specific. I mean, we didn't send the exhibit
22 list.

1 CHAIRPERSON MILLER: Yeah.

2 MS. STERLING: We don't know what
3 their exhibits are either, but they are listed
4 with a name, but we don't know what they look
5 like, of course, so we are not -- you know, we
6 don't have any unfair advantage. And really
7 to address the issue of why we have testimony,
8 it's because we talk to our ANC Commissioners
9 and it has nothing to do with the fact that
10 that was on the PIF Form. It was because it
11 was relevant to the issue at hand.

12 CHAIRPERSON MILLER: Okay. Mr.
13 Silverstein?

14 MEMBER SILVERSTEIN: We have been
15 juggling our schedules because we have so many
16 cases, things drop off, things are pushed
17 forward for time purposes and it creates a
18 hardship to all involved. And as this been
19 difficult for you to lock down your witnesses,
20 when did you know, when were you told that the
21 hearing would be at this particular hour?

22 MS. STERLING: When ABRA informed

1 us. I don't know.

2 MR. FERRIS: We received an email
3 by the name of Tesha Anderson. I really can't
4 say with certainty when we received that. I
5 would guess it was within the last week. I
6 can't say with certainty, but that's what my
7 recollection is.

8 MEMBER SILVERSTEIN: Did you have
9 a list of witnesses and you were going to pick
10 whoever was available? Was that your --

11 MS. STERLING: Well, it's about
12 volunteers, right? So whoever can make it at
13 any particular point in time would notify us
14 they could make it in person. Otherwise, in
15 answer to having them write a letter, it's not
16 to duplicate the testimony, but to have on the
17 record, of course, that there are more than
18 one person who feels that way about a
19 particular issue.

20 MEMBER SILVERSTEIN: Did you know
21 about the time more than a week ago?

22 MS. STERLING: It's hard to say.

1 MR. FERRIS: We don't know.

2 MEMBER SILVERSTEIN: You don't
3 know.

4 MS. STERLING: Yeah, I don't have
5 a clue.

6 MEMBER SILVERSTEIN: Okay.

7 MS. STERLING: Unfortunately, my
8 computer hard drive just died, which my
9 husband --

10 MEMBER SILVERSTEIN: Yes, fine.

11 MS. STERLING: -- will never let
12 me live down, because I didn't backup
13 properly, so I can't go in and see.

14 MEMBER SILVERSTEIN: Mr. Jones?

15 CHAIRPERSON MILLER: Oh, yes, Mr.
16 Jones?

17 MEMBER JONES: Thank you, Madam
18 Chair.

19 CHAIRPERSON MILLER: Okay.

20 MEMBER JONES: Just out of
21 curiosity, when you received the changes for
22 the schedule, do you feel -- do you interpret

1 those as mandates or requests?

2 MS. STERLING: Oh, mandates.

3 MR. FERRIS: Mandates.

4 MEMBER JONES: Okay. Thank you.
5 Thank you, Madam Chair.

6 MS. STERLING: We don't think it
7 is negotiable. Is it?

8 CHAIRPERSON MILLER: No. Okay.
9 He has a question. Did I give to your
10 attorney or --

11 MR. FERRIS: I just had a quick
12 comment.

13 CHAIRPERSON MILLER: Right. So--

14 MEMBER SILVERSTEIN: Sir, let the
15 doctor perform the surgery.

16 CHAIRPERSON MILLER: Okay. So we
17 are going to go into the Executive Boardroom
18 and take a careful look at this issue. So I'm
19 going to read the instructions and we'll take
20 a vote on doing so.

21 As Chairperson of the Alcoholic
22 Beverage Control Board for the District of

1 Columbia and in accordance with Section 405 of
2 the Open Meetings Amendment Act of 2010, I
3 move that the ABC Board hold a closed meeting
4 for the purpose of seeking legal advice from
5 our counsel on Case No. 14-PRO-00009,
6 Amsterdam Falafelshop, per Section 405(b)(4)
7 of the Open Meetings Amendment Act of 2010,
8 and determining the issues presented here for
9 Case No. 14-PRO-00009, Amsterdam Falafelshop
10 for the reasons cited in Section 405(b)(13) of
11 the Open Meetings Amendment Act of 2010.

12 Is there a second?

13 MEMBER SILVERSTEIN: Second.

14 CHAIRPERSON MILLER: Mr.

15 Silverstein has seconded the motion. I'm
16 going to take a roll call vote now that the
17 motion has been seconded.

18 Mr. Brooks?

19 MEMBER BROOKS: I agree.

20 CHAIRPERSON MILLER: Mr. Alberti?

21 MEMBER ALBERTI: I agree.

22 CHAIRPERSON MILLER: Mr.

1 Rodriguez?

2 MEMBER RODRIGUEZ: I agree.

3 CHAIRPERSON MILLER: Ms. Miller
4 agrees.

5 Mr. Silverstein?

6 MEMBER SILVERSTEIN: I agree.

7 CHAIRPERSON MILLER: Mr. Jones?

8 MEMBER JONES: I agree. Okay.

9 MR. O'BRIEN: Madam Chair, before
10 the Board retires, may I say one thing?

11 CHAIRPERSON MILLER: Let me
12 finish. It appears that the motion has passed
13 by a vote of 6-0-0 and that the Board will
14 recess this proceeding and hold a closed
15 meeting in the ABC Board Conference Room
16 pursuant to the Open Meetings Amendment Act of
17 2010.

18 Yes, Mr. O'Brien?

19 MR. O'BRIEN: I am informed just
20 now that our witness, Commissioner Smith, has
21 an email from us dated March 31st advising of
22 this new time, the 4:30 time.

1 CHAIRPERSON MILLER: Okay. All
2 right. Let's go. So you are welcome to take
3 a little break, too. Not, too. You can take
4 a break. Okay.

5 (Whereupon, at 5:18 p.m. a recess
6 until 5:30 p.m.)

7 CHAIRPERSON MILLER: Okay. So I
8 believe that there has been a -- did you make
9 a motion, Mr. O'Brien?

10 MR. O'BRIEN: I did.

11 CHAIRPERSON MILLER: To exclude
12 the witness and evidence, exhibits of the
13 protestants because they didn't identify them
14 in the PIF. Is that correct? Is that the
15 motion?

16 MR. O'BRIEN: Yes, that's the
17 motion.

18 CHAIRPERSON MILLER: Okay. All
19 right. So I would move to deny that motion.
20 Do I have a second?

21 MEMBER RODRIGUEZ: Second.

22 CHAIRPERSON MILLER: Okay. And I

1 would say that we do take the PIF seriously
2 and for that reason, we have spent, I don't
3 know, over half an hour deliberating on these
4 issues. And so I want to say to protestants
5 in particular that despite the fact that I'm
6 moving, at this point, to deny the motion, I'm
7 doing so in part looking at the witness and
8 the exhibits and there being only one witness
9 and it's a lay witness, I don't find that the
10 applicant is particularly prejudiced by not
11 having had the advance notice.

12 It's not to say that in another
13 instance it might appear otherwise. And the
14 same with -- obviously, we can see as we go
15 through the exhibits, but based on the exhibit
16 list, it doesn't appear that way as a matter
17 of course that the applicant would be
18 prejudiced.

19 And in this motion it also
20 addresses and I'm also addressing the argument
21 about the letters and not being able to cross-
22 examine. And I do have in my possession at

1 least a cite to one part of the Administrative
2 Procedure Act that says every party shall have
3 the right to present in person or by counsel
4 his case or defense by oral and documentary
5 evidence, to submit rebuttal testimony and to
6 conduct such cross-examination as may be
7 required for full and true disclosure of the
8 facts.

9 And I think it covers actually
10 both concerns that the party have a chance to
11 have a witness and certainly that the other
12 side have a chance to cross-examine. And I
13 would say with respect to letters that we have
14 been letting them in, but we recognize that
15 the opposing party does not have a chance to
16 cross-examine and so they are not given much
17 weight, but they have been admitted.

18 Okay. So for that reason, I have
19 moved to deny the applicant's motion.

20 MEMBER SILVERSTEIN: Second.

21 CHAIRPERSON MILLER: And it has
22 been seconded by Mr. Silverstein. Any further

1 comments?

2 MEMBER ALBERTI: Yes, Madam Chair,
3 I would just ask that the protestants have one
4 witness and they said that protestant is going
5 to talk about peace, order and quiet. I would
6 ask that you make sure that that really stays
7 focused on peace, order and quiet and doesn't
8 talk about real estate values or
9 transportation or anything or other issues,
10 that that testimony is kept focused.

11 I'm troubled by the amount of time
12 that we spent on here due to the protestants
13 inability to follow our instructions. I also
14 would ask that you make sure that everyone's
15 exhibits is relevant. So if the licensee's
16 counsel objects on relevancy, then I would
17 hold them to high standards of relevancy on
18 all of these exhibits, given that the licensee
19 has had not had a chance to review them.

20 CHAIRPERSON MILLER: Okay.
21 Others? Okay. Then there has been a motion
22 to deny the motion.

1 All those in favor say aye.

2 MEMBER BROOKS: Aye.

3 CHAIRPERSON MILLER: Aye.

4 MEMBER SILVERSTEIN: Aye.

5 MEMBER RODRIGUEZ: Aye.

6 MEMBER SHORT: Aye.

7 MEMBER JONES: No.

8 CHAIRPERSON MILLER: All those

9 opposed?

10 MEMBER JONES: Opposed.

11 CHAIRPERSON MILLER: And then I

12 believe --

13 MEMBER ALBERTI: I'm --

14 CHAIRPERSON MILLER: All those

15 abstaining?

16 MEMBER ALBERTI: No, I'm voting to

17 deny.

18 CHAIRPERSON MILLER: Okay. Then I

19 believe the vote is --

20 MEMBER ALBERTI: So it's 4-2.

21 CHAIRPERSON MILLER: 5-2.

22 MEMBER ALBERTI: 5-2.

1 CHAIRPERSON MILLER: 5-2-0.

2 MEMBER ALBERTI: I can't count.

3 CHAIRPERSON MILLER: Okay.

4 MEMBER JONES: Mr. statistician.

5 CHAIRPERSON MILLER: All right.

6 So --

7 MEMBER ALBERTI: Let's just hope I
8 do better later in the day.

9 CHAIRPERSON MILLER: All right.
10 So okay in the future there will be more --
11 you understand --

12 MS. STERLING: Yes.

13 CHAIRPERSON MILLER: -- the need
14 to be focused.

15 MS. STERLING: We understand and I
16 guess one suggestion is that maybe there
17 should be a little bit longer time between the
18 mediation -- or sorry, the Status Hearing date
19 and the Protest Hearing date, more than seven
20 days, so it allows the protestants to get the
21 proper forms filed.

22 MEMBER ALBERTI: This --

1 CHAIRPERSON MILLER: Okay. I
2 don't want to -- okay. I don't see the need.
3 I don't see why the protestant wouldn't know
4 their witnesses before status conference. I
5 don't really know what -- we tell you at
6 status conference that it affects who your
7 witnesses are. Okay.

8 MR. O'BRIEN: Just as the Chair
9 admonishes the protestants to be guided in the
10 future, we too, in our office, shall be guided
11 in the future in preparing our Protest
12 Information Forms by the precedent that is set
13 today.

14 CHAIRPERSON MILLER: Okay. You
15 can do that. All right. I do want to say
16 that it is usually to everybody's benefit if
17 everyone is on notice as to what the issues
18 are, so we don't spend, you know, hours here
19 and going until 10:00 at night or whatever.
20 All right.

21 MEMBER SILVERSTEIN: Let's get
22 started.

1 CHAIRPERSON MILLER: Let's go.

2 MEMBER SILVERSTEIN: Whew.

3 CHAIRPERSON MILLER: Any other
4 preliminary matters? Okay. So opening
5 statements? Applicant?

6 MR. O'BRIEN: The evidence will
7 show there is zero reason why the Board should
8 deny this application. Thank you.

9 CHAIRPERSON MILLER: Thank you.
10 Protestants?

11 MS. STERLING: Yes, thank you.
12 One of the concerns that SDCA had when we
13 filed our moratorium petition in December had
14 to do with peace, order and quiet issues,
15 proliferation of licenses, a number of issues.
16 But at the end of the day, the Board had a
17 notice denying the petition for rulemaking an
18 order and the Board -- but the Board did
19 recognize that the Board is convinced that
20 other tools exist to address the concerns
21 raised in the petition, such as settlement
22 agreements and increased police reimbursable

1 details.

2 And that's why we are here today,
3 because we are following what the Board has,
4 basically, instructed us to do in that order,
5 which is try and manage our licenses in a way
6 with the current tools that we have and
7 settlement agreements are the main tool that
8 we have to do that. So that's why we are here
9 today.

10 We have tried to settle this
11 sooner, based on some reasonable terms, but,
12 unfortunately, the applicant was not
13 interested in this.

14 CHAIRPERSON MILLER: Okay. I have
15 two things to say. I know you are all
16 familiar with the proceedings, but I want to
17 make sure just in case you are familiar with
18 the time that you each have an hour and a
19 half. I forgot to say that and you know how
20 that is measured? Okay. And what happens in
21 this hearing and this is a tool, but what
22 happens in this hearing is you present

1 evidence to show if there is some adverse
2 impact on peace, order and quiet, what
3 condition you would like or recommend or
4 whatever to ameliorate that.

5 We don't want to hear about how
6 settlement negotiations broke down or anything
7 about that. That's really not relevant. What
8 we are looking at is is there something we
9 need to do with respect to an order should we
10 grant it, deny it or condition it.

11 Okay. Now, we can call our
12 Investigator. I think it's afternoon. Good
13 afternoon.

14 INVESTIGATOR MATHIESON: Good
15 afternoon.
16 Whereupon,

17 INVESTIGATOR ERIN MATHIESON
18 was called as a witness by the ABRA Board, and
19 having been first duly sworn, assumed the
20 witness stand and was examined and testified
21 as follows:

22 CHAIRPERSON MILLER: All right.

1 Thank you. So whenever you are ready, if you
2 would like to discuss your findings?

3 INVESTIGATOR MATHIESON: Sure. I
4 was tasked with conducting a protest
5 investigation for Amsterdam Falafelshop
6 located at 1830 14th Street, N.W., Washington,
7 D.C. A Class DR License application was
8 submitted with a proposed total occupancy of
9 59 and it did not have any endorsements
10 included on that application.

11 Amsterdam Falafelshop is currently
12 open and operating with food service-only and
13 has applied for the -- to add liquor license
14 to the existing business. The new license
15 application is being protested by one group,
16 the Shaw-Dupont Citizens Association, which
17 submitted a letter on Friday, January 17,
18 2014.

19 The designated representative for
20 the Shaw-Dupont Citizens Association was
21 listed as Elwyn Ferris who appeared at the
22 Roll Call Hearing.

1 ANC-2B submitted a letter to ABRA
2 supporting the new license application for
3 Amsterdam Falafelshop acknowledging the
4 application does not include entertainment and
5 stating that it would be a benefit to the
6 community.

7 The proposed hours of operation
8 for the license would be Sunday through
9 Saturday opening at 10:00 a.m., closing Sunday
10 and Monday at 12:00 a.m., closing Tuesday and
11 Wednesday at 2:30 a.m., closing Thursday at
12 3:00 a.m. and closing Friday and Saturday at
13 4:00 a.m.

14 The proposed hours of sales for
15 the location are Sunday through Saturday
16 beginning at 10:00 a.m. ending Sunday at 12:00
17 a.m., Monday at 12:00 a.m., Tuesday and
18 Wednesday and Thursday at 1:00 a.m., and
19 Friday and Saturday at 2:00 a.m.

20 The listed protest issues of the
21 Shaw-Dupont Citizens Association is:

22 (1) Adverse impact on peace, order

1 and quiet.

2 (2) Adverse impact on residential
3 parking and vehicular and pedestrian safety.

4 (3) Other; cited as over-
5 concentration.

6 On Tuesday, April 1, 2014, I met
7 with the applicant, Dean Cherry. Mr. Cherry
8 expressed that he wanted to be a good neighbor
9 to the community and has worked to meet and
10 address all of the concerns that were raised
11 by the community and the protestants.

12 Mr. Cherry added that the Shaw-
13 Dupont Citizens Association would like him to
14 sign a voluntary agreement to settle the
15 protest; however, he stated that he did not
16 want to sign the voluntary agreement or
17 settlement agreement and place unnecessary
18 restrictions upon his license.

19 In reference to the peace, order
20 and quiet issues, Mr. Cherry stated that some
21 concerns were expressed regarding trash and
22 deliveries. Mr. Cherry advised that in an

1 effort to keep the noise down, he has opted to
2 serve only cans of beer and not bottles of
3 beer.

4 Additionally, he heard Mr. Cherry
5 say that he believes this would cut down on
6 noise during the removal of the trash and
7 additionally he has scheduled for trash pickup
8 six days a week, so that the area is clean
9 daily and on top of that, remains clean at all
10 times.

11 There is a sign that is posted at
12 the rear door, which reminds employees to keep
13 the lids closed and to keep the noise down.

14 In reference to the hours of
15 delivery, Mr. Cherry advised that the
16 establishment does not open until 10:00 a.m.
17 and employees will likely not arrive before
18 9:00 a.m. Therefore, there would be no
19 deliveries prior to that hour.

20 In reference to the general hours
21 of operation, Mr. Cherry advised that the
22 Shaw-Dupont Citizens Association did wish for

1 him to have closing hours that were earlier.
2 However, he stated that he is not willing to
3 concede that.

4 Mr. Cherry added that he
5 anticipates a late night food crowd and would
6 like to stay open to compete with other
7 businesses that are in the area serving food.

8 Additionally, Mr. Cherry added
9 that the -- he predicts or anticipates the
10 alcohol sales will be a small percentage of
11 the overall business operations, perhaps only
12 5 to 10 percent at most.

13 Mr. Cherry expressed that he would
14 like his business, Amsterdam Falafelshop, to
15 be a place where people go late night with an
16 emphasis on food sales and would have -- also
17 additionally, excuse me, would be a place for
18 them to have lunch or to stop by before going
19 out for the evening.

20 If the establishment is approved
21 for the liquor license, Mr. Cherry stated he
22 intends to post a sign at the front of the

1 establishment asking patrons to keep the noise
2 down, be respectful of the neighbors as they
3 exit.

4 In reference to a potential impact
5 upon residential parking and vehicular and
6 pedestrian safety, Mr. Cherry added that the
7 establishment -- he understands the
8 establishment, there is limited parking in the
9 area surrounding it.

10 In an effort to not further
11 exasperate the already busy parking
12 conditions, Mr. Cherry stated that he has
13 employees or he has put together a handbook
14 and he has all employees sign a piece of paper
15 stating that they will attempt to take public
16 transportation to the establishment. A copy
17 of that handbook was provided for the purposes
18 of the report.

19 In reference to the protestants, I
20 was unable to reach the designated
21 representative, Elwyn Ferris, but I was able
22 to speak with Joan Sterling, who is the

1 President of the Shaw-Dupont Citizens
2 Association.

3 I asked Ms. Sterling to elaborate
4 upon the peace, order and quiet component of
5 the protest and she stated that the
6 association is specifically concerned with
7 trash and deliveries at the Amsterdam
8 Falafelshop and the impact that this will have
9 upon the general peace, order and quiet of the
10 neighborhood.

11 Ms. Sterling further stated that
12 the area once had a large problem with rats in
13 the surrounding neighborhood and since then
14 the association has managed to get that issue
15 under control by not allowing trash to be
16 stored in public space.

17 Ms. Sterling also advised that she
18 is concerned with bottle dumping as well as
19 times of delivery and trash pickup. Ms.
20 Sterling added that the Dupont Citizens
21 Association has a voluntary agreement or
22 settlement agreement with nearly all of 14th

1 Street, which restricts the hours for trash
2 and delivery. But then also stated that this
3 owner does not want to honor the requests of
4 the neighborhood.

5 I advised Ms. Sterling that I had
6 spoken with the applicant in regards to the
7 trash area and he had stated that there was no
8 space for the storage of trash inside the
9 establishment, but has taken several steps,
10 including arranging for trash pickup six days
11 a week and posting a sign at the rear of the
12 door to keep the area clean and quiet in order
13 to accommodate the needs of the neighborhood.

14 Ms. Sterling stated that she was
15 aware of what the applicant had done, but is
16 concerned that if there is no voluntary
17 agreement or settlement agreement in place, he
18 will deviate from the current practices in the
19 future.

20 Ms. Sterling additionally added
21 that the applicant knew what he was doing when
22 he designed the space and, therefore, it

1 should not be the problem of the neighborhood
2 that he does not have space inside the
3 establishment to store trash before pickup.

4 Additionally, Ms. Sterling did
5 advise that the Department of Transportation,
6 also known as DDOT, has guidelines which
7 restrict the storage of grease containers
8 within 4 feet of a vertical space.

9 Ms. Sterling stated that the
10 grease container is next to the wall, which is
11 a violation, and further added that DDOT had
12 recently been to the location and issued a
13 citation for that violation. I did ask Ms.
14 Sterling for a copy or any information she had
15 in reference to that citation.

16 Lastly, in reference to peace,
17 order and quiet, Ms. Sterling added that the
18 Shaw-Dupont Citizens Association was trying to
19 keep everyone in the neighborhood with similar
20 operating hours and added that this
21 establishment has applied for hours that are
22 later than anyone else in the area,

1 specifically on Sundays through Thursdays.

2 I advised Ms. Sterling that the
3 applicant requested hours for operation that
4 are late, however, also added that there were
5 restricted hours for sales, Sunday through
6 Thursday from 12:00 or 1:00 a.m., and that the
7 hours of operation extended beyond the hours
8 of sales.

9 Ms. Sterling stated that they are
10 concerned with the hours of operation and
11 added that this establishment has created a
12 business model to feed the drunk.

13 In reference to the residential
14 parking needs of the -- or excuse me. Going
15 on with the protest, Ms. Sterling added that
16 if the establishment is approved with the
17 extended hours, this will add additional cars
18 on the street and also further added that the
19 establishment currently does not have a
20 contract for valet.

21 In reference to the over-
22 concentration issue, which is listed as the

1 other component of the protest, Ms. Sterling
2 stated that, in general, ABC establishments
3 are not allowed to comprise over 50 percent of
4 the ARTS Zone, according to Overlay
5 Guidelines.

6 Additionally, Ms. Sterling advised
7 that ABRA Guidelines due to moratorium can be
8 requested if there are 18 establishments
9 located within 1,800 feet of one another. She
10 furthermore added that the Shaw-Dupont
11 Citizens Association requested a moratorium
12 for the area and went to the hearing, but
13 added that the ABC Board did not grant that
14 moratorium.

15 On Wednesday, April 2, 2014, I
16 followed-up with the applicant, Dane Cherry,
17 in regards to the protest matter and some
18 statements that were made by the protestants.
19 Specifically, in regards to the matter of a
20 citation being issued by DDOT, Mr. Cherry
21 stated that someone from DDOT had been to the
22 location, but did not issue any citations and

1 advised him that his trash area was in
2 compliance.

3 I asked Mr. Cherry if he had the
4 contact information from the person who
5 visited his location and he provided me with
6 the name of Pamela Washington, who is with the
7 Solid Waste Health Education Enforcement
8 Division of the Department of Public Works.

9 As stated, Amsterdam Falafelshop
10 is located at 1830 14th Street, N.W., which is
11 an ARTS/C-3-A Zone. This means that Amsterdam
12 Falafelshop is located in an Overlay with an
13 ARTS Zone. The ARTS Zone does specify that
14 "No portion of an eating/drinking
15 establishment located on the ground floor of
16 squares fronting 14th Street or U Street,
17 N.W., is permitted to occupy more than 50
18 percent of the linear frontage of that
19 square."

20 It does not state that it is -- as
21 was earlier advised, it does not state that
22 ABC establishments cannot compromise 50

1 percent of the total zone.

2 Referenced here by establishments,
3 according to the District of Columbia
4 Geographic Information System, there are 57
5 ABC-licensed establishments operating within
6 1,200 feet of Amsterdam Falafelshop. There
7 are no schools, recreation centers, libraries
8 or daycares located within 400 feet of the
9 establishment.

10 In reference to the business
11 operation, as stated previously, Amsterdam
12 Falafelshop is currently open for business.
13 The front area of the establishment has
14 several tables along with a counter at the
15 side that has stools for seating.

16 There is an open kitchen area
17 where food is prepared and served. There is
18 a self-service area for toppings and
19 condiments. There is a menu posted at the
20 rear wall where orders can be placed. Behind
21 the kitchen area there is a closed storage
22 area and some office space and to the right of

1 that there is a narrow hallway that leads to
2 the bathrooms and the rear door that lets to
3 the alley.

4 Again, Amsterdam Falafelshop has
5 not applied for any entertainment endorsements
6 and will not offer entertainment.

7 In reference to cuisine, there is
8 a menu currently being served at the
9 establish, which was also attached to the
10 original application and the establishment
11 serves falafel sandwiches, salad bowls, french
12 fries and snacks and beverages.

13 ABRA Investigators monitored
14 Amsterdam Falafelshop on two occasions,
15 Tuesday, April 2, 2014 and Thursday, April 4,
16 2014. The establishment was open for
17 business, only had a few patrons inside during
18 the times of monitoring.

19 The area surrounding the
20 establishment was very clean in comparison to
21 the other areas on 14th Street, N.W. There
22 were no issues with peace, order, quiet. The

1 rear alley trash cans that were surrounding
2 the establishment were clean. And
3 additionally, I did observe trash cans and
4 recycle bins that were lining residential
5 areas of the alley.

6 In reference to parking, Amsterdam
7 Falafelshop again is located on 14th Street,
8 N.W. All parking in that area is restricted
9 to a two-hour maximum. Some of it is
10 monitored by meters, others are not. In the
11 surrounding area, there is limited available
12 parking on side streets and they have various
13 restrictions depending on the specific
14 location.

15 The Reeves Center, located at 2000
16 14th Street, N.W., does allow for public
17 parking during the evening and weekend hours.
18 There are several bus stops that are located
19 along 14th and U Street, N.W., Corridor. And
20 additionally, the U Street African American
21 Civil War Memorial/Cardozo Metro Stop is
22 located at 1240 U Street, N.W., which is about

1 .3 miles from Amsterdam Falafelshop, which is,
2 approximately, a 7 minute walk.

3 I did also prepare -- in addition,
4 that was the summary of my investigative
5 report for the protest, but I did also prepare
6 a supplemental report for this protest.

7 On Wednesday, April 2, 2014, I had
8 submitted an inquiry to Pamela Washington, who
9 is the Chief of Solid Waste Education and
10 Enforcement Program with the Department of
11 Public Works. I expressed an inquiry over the
12 results of a visit from Ms. Washington to the
13 Amsterdam Falafelshop, specifically in
14 reference to storage of the trash, which is
15 located in the rear alley.

16 I asked Ms. Washington to respond
17 to me and confirm either a violation or not a
18 violation.

19 On Monday, April 7th, I received
20 two email responses from Pamela Washington.
21 In the first email, Ms. Washington had
22 forwarded the original complaint, which had

1 been sent from Elwyn Ferris to the Executive
2 Office of the Mayor. Attached to that
3 complaint was a photograph of the trash cans
4 which were in the rear alley.

5 Ms. Washington noted that in that
6 photograph the trash area was clean, but
7 stated that the complaint was simply about the
8 trash cans being located in the alley.

9 In the second email, Ms.
10 Washington advised that she visited the
11 establishment on two occasions to inspect the
12 trash container area located in the rear
13 alley. She advised that she did not see any
14 other place for the trash containers to be
15 stored, because the building occupies the
16 entire lot and ends at the alley.

17 Additionally, Ms. Washington
18 advised that she did not find any violations
19 and described the trash area as neat and not
20 overflowing.

21 Additionally, she added that she
22 was more concerned with the lot next door that

1 had overflowing trash containers, but which
2 were difficult to see due to a fenced-in area
3 that they were enclosed behind.

4 And that concludes the summary of
5 my protest investigation.

6 MEMBER SILVERSTEIN: Thank you.

7 CHAIRPERSON MILLER: Thank you
8 very much. Board questions? No other
9 questions? Okay. We are tempted, but all
10 right, let's go to the applicant. Do you have
11 any questions?

12 CROSS-EXAMINATION

13 MR. O'BRIEN: Were you ever able
14 to find any corroboration at all for Ms.
15 Sterling's allegation that a citation had been
16 issued to the applicant?

17 INVESTIGATOR MATHIESON: No. As I
18 stated in the supplemental report, Ms.
19 Washington advised in her emails that she did
20 not issue any citations and she had reviewed
21 the space and determined that there were no
22 violations.

1 MR. O'BRIEN: In looking at your
2 report, Exhibit 16 is a photograph, I believe
3 you will confirm, of the trash cans in the
4 rear of the establishment.

5 INVESTIGATOR MATHIESON: I
6 actually don't have a copy of that in front of
7 me. Yes, it's a photograph of the trash cans.

8 MR. O'BRIEN: Okay. Who took that
9 photograph?

10 INVESTIGATOR MATHIESON: I did.

11 MR. O'BRIEN: And when did you do
12 that?

13 INVESTIGATOR MATHIESON: That was
14 on Tuesday, I believe the date is, April 1st.

15 MR. O'BRIEN: Okay. And looking
16 at that photograph, I'll show it to you again,
17 do you see any signs of disorder or lack of
18 cleanliness?

19 INVESTIGATOR MATHIESON: No. I
20 looked at the area and it was clean.

21 MR. O'BRIEN: On that day?

22 INVESTIGATOR MATHIESON: Correct.

1 MR. O'BRIEN: All right. And do
2 you go on another day?

3 INVESTIGATOR MATHIESON: Yes.

4 MR. O'BRIEN: And what day was
5 that?

6 INVESTIGATOR MATHIESON: I believe
7 Thursday, April 3rd, I believe the date is,
8 yes, April 3rd.

9 MR. O'BRIEN: So just to be sure
10 that we understand your testimony, you made
11 two visits and looked at the trash cans and
12 Ms. Washington from the Solid Waste Management
13 Division made two visits.

14 INVESTIGATOR MATHIESON: Correct.

15 MR. O'BRIEN: On those total of
16 four visits, there was no indication that the
17 trash area was in any sort of disorder? Is
18 that correct?

19 INVESTIGATOR MATHIESON: Correct.

20 MR. O'BRIEN: You stated that
21 Elwyn Ferris was designated as the point of
22 contact for Shaw Dupont Neighborhood Alliance?

1 CHAIRPERSON MILLER: I think it's
2 somebody else.

3 MR. O'BRIEN: Citizens Alliance,
4 excuse me.

5 INVESTIGATOR MATHIESON: Yes, he
6 appeared at the Roll Call Hearing.

7 MR. O'BRIEN: Okay.

8 INVESTIGATOR MATHIESON: Listed as
9 the designated representative.

10 MR. O'BRIEN: Did Mr. Ferris
11 cooperate with your investigation?

12 INVESTIGATOR MATHIESON: I was
13 unable to reach Mr. Ferris, but I spoke with
14 Ms. Sterling instead.

15 MR. O'BRIEN: Well, how many times
16 did you try to reach Mr. Ferris?

17 MEMBER SILVERSTEIN: Could you,
18 please, speak up, Ms. Mathieson?

19 INVESTIGATOR MATHIESON: Sure.
20 I'm sorry. I attempted to call him a total of
21 three times. He did return my phone call on
22 one occasion, but the call was dropped and

1 then I proceeded to call him back and left
2 another message, but did not hear back.

3 MR. O'BRIEN: Did Ms. Sterling not
4 indicate to you that her principal problem
5 with this applicant is that it refuses to sign
6 a voluntary agreement or Mr. Cherry?

7 CHAIRPERSON MILLER: I'm sorry,
8 what was the question?

9 MR. O'BRIEN: I'm sorry. If I can
10 restate it?

11 CHAIRPERSON MILLER: Yes, please.

12 MR. O'BRIEN: Okay. Did not Ms.
13 Sterling on behalf of the Shaw-Dupont Citizens
14 Alliance indicate to you that her principal
15 problem with this applicant is that it refuses
16 to sign a settlement agreement?

17 INVESTIGATOR MATHIESON: I don't
18 think she said that was her -- I wouldn't say
19 she said that was her primary problem.

20 MR. O'BRIEN: Or a --

21 INVESTIGATOR MATHIESON: It was
22 one of the issues, yes. It was noted in my

1 interview.

2 MR. O'BRIEN: Those are my
3 questions. Thank you.

4 CHAIRPERSON MILLER: Okay. Thank
5 you. Do the protestants have questions?

6 MS. STERLING: Yes.

7 CHAIRPERSON MILLER: Okay.

8 MS. STERLING: I'm interested in
9 on your report from Tuesday, April 1st, when
10 you discussed with Mr. Cherry and it is on
11 your page 3 of your report under B.

12 INVESTIGATOR MATHIESON: Okay.

13 MS. STERLING: It says that he
14 didn't want to sign the VA and place
15 unnecessary restrictions upon his license.
16 Can you elaborate what those restrictions are
17 or what he meant by that?

18 INVESTIGATOR MATHIESON: I don't
19 believe he was specific in our conversation.
20 He just stated he didn't want unnecessary
21 restrictions placed upon his license. He did
22 emphasize that he wanted to be a good neighbor

1 and had worked to address all the concerns
2 that had been raised.

3 MS. STERLING: Great. But he did
4 not enumerate what he considered unnecessary
5 restrictions?

6 INVESTIGATOR MATHIESON: No, he
7 didn't go into detail on what those specific
8 restrictions would or would not have been.

9 MS. STERLING: Thank you. And you
10 also mentioned that he had told -- when we had
11 requested shorter hours that he was not
12 interested in that --

13 INVESTIGATOR MATHIESON: Yes.

14 MS. STERLING: -- change.

15 INVESTIGATOR MATHIESON: Correct.

16 MS. STERLING: All right. And did
17 he indicate what those hours were that we had
18 requested?

19 INVESTIGATOR MATHIESON: No.

20 MS. STERLING: Okay. Thank you.
21 And now, I would like to go to the times that
22 you inspected.

1 INVESTIGATOR MATHIESON: Sure.

2 MS. STERLING: It appears that
3 both of those inspections were on Tuesday,
4 April 1st, and Thursday, April 3rd, were in the
5 middle of the afternoon.

6 INVESTIGATOR MATHIESON: Correct.

7 MS. STERLING: Were any
8 inspections done during the time of late
9 evening or early morning hours when we expect
10 to see the most issues with noise, with trash?

11 INVESTIGATOR MATHIESON: No.

12 MS. STERLING: Peace, order, quiet
13 issues?

14 INVESTIGATOR MATHIESON: There are
15 no -- no monitoring was done during the
16 evening hours, no.

17 MS. STERLING: Thank you. And
18 then let's go to your photo No. 16 and in the
19 front of the trash cans on the ground, can you
20 tell me what that appears to be in front of
21 the grease can there?

22 INVESTIGATOR MATHIESON: Yeah,

1 that was just appearing to be -- it does look
2 liquidity, but at the time it was just water.
3 So it looks like though it had been cleaned or
4 rinsed.

5 MS. STERLING: Okay. What made
6 you think that was water?

7 INVESTIGATOR MATHIESON: I saw it.

8 MS. STERLING: And also in that
9 picture, you can see the demarkation of the
10 abutting building to that where some of those
11 containers are located.

12 INVESTIGATOR MATHIESON: I'm not
13 sure what you are referring to.

14 MS. STERLING: Well, exhibit -- we
15 would like to enter Exhibit 2, please.

16 CHAIRPERSON MILLER: You would
17 like to what?

18 MS. STERLING: It's multiple
19 additional photos of the --

20 MR. FERRIS: This is not --

21 CHAIRPERSON MILLER: You would
22 like to show her? You're going to show her

1 your Exhibit 2?

2 MS. STERLING: This is hers. I
3 was just showing her the building line.

4 INVESTIGATOR MATHIESON: I can't
5 say for certain if that's the building line or
6 not.

7 MS. STERLING: Well, we would like
8 to have her photos for exhibits.

9 CHAIRPERSON MILLER: No. They are
10 hers. Her report is a part of the record.

11 MS. STERLING: Okay.

12 CHAIRPERSON MILLER: So they are
13 in. They are in.

14 MS. STERLING: Okay. Thank you.

15 CHAIRPERSON MILLER: Okay.

16 MS. STERLING: Can you look at
17 your photo No. 17, please?

18 INVESTIGATOR MATHIESON: Sure.

19 MS. STERLING: Would you describe
20 this residence on the T Street alley?

21 INVESTIGATOR MATHIESON: Correct.

22 MS. STERLING: Right. On trash

1 day when their trash is out, that post is the
2 differentiator between public and private
3 space and --

4 INVESTIGATOR MATHIESON: Yes.

5 MR. O'BRIEN: Objection.

6 Objection. I think --

7 CHAIRPERSON MILLER: Did she
8 testify?

9 MR. O'BRIEN: -- Sterling is
10 testifying here.

11 CHAIRPERSON MILLER: Yes. So do
12 you have a question based on the photo?

13 MS. STERLING: Yes. So I'm
14 wondering why these resident trash bins on
15 trash day --

16 INVESTIGATOR MATHIESON: Sure.

17 MS. STERLING: -- were relevant to
18 the investigation.

19 INVESTIGATOR MATHIESON: So
20 interestingly enough, I did actually do a
21 little research on this and the -- on the
22 Department of Public Works website, there are

1 restrictions for residential trash.

2 From what I understood for trash,
3 there is a time that you can put it out the
4 night before a pickup and a time that it has
5 to be removed on the day of pickup.

6 MS. STERLING: Um-hum.

7 INVESTIGATOR MATHIESON: So this
8 picture was taken on Tuesday. I did also plug
9 in the address for the residences that are in
10 that area and trash pickup for that area is
11 Tuesday and Friday. And upon my visit on
12 Thursday, the trash cans were still located
13 there in the same area.

14 MS. STERLING: Okay.

15 INVESTIGATOR MATHIESON: So that
16 was the purpose of mentioning that.

17 MS. STERLING: Right. And they
18 were located on private space or public space?

19 INVESTIGATOR MATHIESON: I don't
20 know if that's private or public. I just
21 noted that they were put out and according to
22 what was said on the DPW website, they were

1 supposed to be removed.

2 MS. STERLING: All right. So you
3 can't testify that they are on public space?

4 INVESTIGATOR MATHIESON: They are
5 in front of the gate, but I don't know if that
6 is public or private. I cannot say for sure,
7 no.

8 MS. STERLING: Okay. And can we
9 now look at your Exhibit 13?

10 INVESTIGATOR MATHIESON: Sure.

11 MS. STERLING: This is an exhibit
12 that we find interesting, because it shows
13 the --

14 CHAIRPERSON MILLER: Wait, wait.
15 Let me just caution you.

16 MS. STERLING: Yes.

17 CHAIRPERSON MILLER: Mr. O'Brien
18 is looking at me and he is right.

19 MS. STERLING: I'm sorry. I
20 understand.

21 CHAIRPERSON MILLER: You can't
22 testify.

1 MS. STERLING: Sorry.

2 CHAIRPERSON MILLER: Thank you.

3 MS. STERLING: I'm an engineer,
4 not a lawyer.

5 MEMBER ALBERTI: You haven't
6 missed anything.

7 MS. STERLING: Because I was
8 testifying. So can you tell me what is
9 directly across from the trash can in this
10 picture?

11 INVESTIGATOR MATHIESON: A
12 building.

13 MS. STERLING: Do you know what
14 kind of building it is?

15 INVESTIGATOR MATHIESON: No, I do
16 not. I believe there is some residential
17 component to it, but I don't know what exactly
18 is in there.

19 MS. STERLING: Okay. So you
20 didn't consult with anybody who was associated
21 with this particular building --

22 INVESTIGATOR MATHIESON: No.

1 MS. STERLING: -- during your
2 investigation?

3 INVESTIGATOR MATHIESON: No. The
4 only people I would consult with would be the
5 applicant and the designated representative
6 for the protestants.

7 MS. STERLING: Okay. Thank you.

8 INVESTIGATOR MATHIESON: Sure.

9 CHAIRPERSON MILLER: Okay. Any
10 other Board questions? Any redirect? Thank
11 you. That was a really excellent report.

12 INVESTIGATOR MATHIESON: Thank
13 you.

14 CHAIRPERSON MILLER: That's why we
15 didn't have any questions.

16 INVESTIGATOR MATHIESON: Oh, okay.

17 CHAIRPERSON MILLER: No, we don't
18 have questions for you.

19 INVESTIGATOR MATHIESON: Okay.

20 CHAIRPERSON MILLER: It was so
21 good.

22 INVESTIGATOR MATHIESON: Okay,

1 thank you.

2 CHAIRPERSON MILLER: So thank you.
3 Very thorough. Okay. All right. Mr.
4 O'Brien?

5 MR. O'BRIEN: Yes. May we presume
6 that the Board is receiving the report into
7 evidence?

8 CHAIRPERSON MILLER: Yes. The
9 investigative report?

10 MR. O'BRIEN: Yes.

11 CHAIRPERSON MILLER: Yes.

12 MR. O'BRIEN: The investigative
13 report and the supplemental report?

14 CHAIRPERSON MILLER: Yes.

15 MR. O'BRIEN: Okay. All right.
16 I'm going to call Noah Smith.

17 CHAIRPERSON MILLER: Good evening.
18 Hello.

19 Whereupon,

20 NOAH SMITH

21 was called as a witness by Counsel for the
22 Applicant, and having been first duly sworn,

1 assumed the witness stand and was examined and
2 testified as follows:

3 CHAIRPERSON MILLER: Okay. Thank
4 you.

5 DIRECT EXAMINATION

6 MR. O'BRIEN: Would you state your
7 full name, please?

8 MR. SMITH: Noah Smith.

9 MR. O'BRIEN: And, Mr. Smith, what
10 office, if any, do you hold?

11 MR. SMITH: I am an ANC
12 Commissioner, Single Member District 2B09.
13 I'm also the Vice Chair of the Dupont Circle
14 ANC.

15 MR. O'BRIEN: Thank you for that.
16 Your Single Member District is 2B09?

17 MR. SMITH: That's correct.

18 MR. O'BRIEN: All right. Where --
19 I'll just ask you yes or no. Is the Amsterdam
20 Falafelshop located within your Single Member
21 District?

22 MR. SMITH: Yes.

1 MR. O'BRIEN: Okay. Did the
2 commission support -- well, did the commission
3 take a position, by the commission, I mean,
4 the full Advisory Neighborhood Commission,
5 take a position with respect to this
6 application?

7 MR. SMITH: Yes.

8 MR. O'BRIEN: And what was the
9 position that the commission took?

10 MR. SMITH: The ANC-2B supported
11 the license application.

12 MR. O'BRIEN: Okay. And I'll ask
13 you to take a look at what is in front of you.
14 It's marked plaintiff, it's the Applicant's
15 Exhibit No. 6.

16 CHAIRPERSON MILLER: Okay.

17 MR. O'BRIEN: And ask if you can
18 tell the Board what that document, No. 6, is,
19 please?

20 MR. SMITH: This is our letter to
21 the Alcoholic Beverage Control Board
22 indicating our support for the license for

1 Amsterdam Falafelshop at 1830 14th Street,
2 N.W.

3 MR. O'BRIEN: I would move No. 6
4 into evidence, Madam Chair.

5 CHAIRPERSON MILLER: Did you hand
6 it to anyone up here?

7 MR. O'BRIEN: Not yet.

8 CHAIRPERSON MILLER: Okay. Well,
9 I usually like to look at it before I admit
10 it.

11 MR. O'BRIEN: Very well.

12 CHAIRPERSON MILLER: I always like
13 to look at it.

14 MR. O'BRIEN: Very well.

15 CHAIRPERSON MILLER: Okay. Okay.
16 Any objection? Not hearing any objection,
17 then I'll admit this as Applicant's Exhibit
18 No. 6.

19 (Whereupon, the document was
20 marked for identification as
21 Applicant Exhibit 6 and was
22 received in evidence.)

1 MR. O'BRIEN: Thank you.

2 CHAIRPERSON MILLER: Okay.

3 MR. O'BRIEN: Mr. Smith, from
4 time-to-time, ANC-2C asks ABC license
5 applicants to enter into settlement
6 agreements, does it not?

7 MR. SMITH: ANC-2B. And yes.

8 MR. O'BRIEN: Thank you. That
9 ANC-2B does ask applicants to enter into
10 settlement agreements from time-to-time. Is
11 that correct?

12 MR. SMITH: Yes.

13 MR. O'BRIEN: Okay. And did the
14 ANC request a settlement agreement from this
15 applicant?

16 MR. SMITH: No.

17 MR. O'BRIEN: And why not?

18 MR. SMITH: We did not feel it was
19 necessary in this case. In fact, our support
20 of a license application indicates that, by
21 definition, we are not protesting the license
22 and so we did not feel it necessary to be --

1 to enter into negotiations over a settlement
2 agreement.

3 In this case, we actually thought
4 that the applicant, the business coming into
5 our neighborhood would provide a community
6 benefit and ANC-2B has a history of supporting
7 licenses as opposed to taking no action on
8 licenses, on applications of licenses I should
9 say when we feel there is a community benefit.

10 In this case, we found the
11 community benefit to actually be that they
12 were staying open late and serving food. We
13 liked the fact that they were staying open
14 until 2:00, 3:00 and 4:00 in the morning
15 serving a crowd that is often not served food
16 at that time.

17 And so we found that to be a
18 community benefit and as such supported as
19 opposed to took no action or protested.

20 MR. O'BRIEN: Mr. Smith, there
21 will be evidence, or maybe it is already in
22 the record from the Investigator, that

1 Amsterdam Falafelshop has been open for,
2 approximately, two weeks now. Have you had
3 opportunity to visit the restaurant?

4 MR. SMITH: Yes.

5 MR. O'BRIEN: Have you had an
6 opportunity to scrutinize its surroundings
7 including front and back?

8 MR. SMITH: Yes.

9 MR. O'BRIEN: Okay. Have you seen
10 anything in that two weeks of operation which
11 causes you concern regarding the manner in
12 which this business is operating?

13 MR. SMITH: No.

14 MR. O'BRIEN: Those are my
15 questions. Thank you.

16 CHAIRPERSON MILLER: Okay. Cross?

17 MS. STERLING: Yes.

18 CROSS-EXAMINATION

19 MS. STERLING: Okay. So,
20 Commissioner Smith, can you tell us if you
21 spoke with any of the residents in the
22 immediate vicinity regarding their concerns of

1 lack of concerns on this?

2 MR. SMITH: Before we supported or
3 after we supported?

4 MS. STERLING: Hopefully before.

5 MR. SMITH: I heard from several
6 residents that they were excited that
7 Amsterdam Falafel was coming in. It had been
8 well-noticed for several months before the
9 liquor license application came in, so I think
10 folks knew it was coming. I heard from, and
11 I don't want to say a lot, but I would say,
12 several folks who said they were excited the
13 business was coming into the neighborhood.

14 MS. STERLING: Okay. And --

15 CHAIRPERSON MILLER: Can you speak
16 up? Should she speak up?

17 MEMBER RODRIGUEZ: Yes, please.

18 CHAIRPERSON MILLER: Could you
19 speak up a little bit?

20 MS. STERLING: Yes. Thank you.
21 Are you familiar with some of the settlement
22 agreements that the other businesses in this

1 area have signed?

2 MR. SMITH: Yes.

3 MS. STERLING: Great. And are you
4 familiar with the provisions in those
5 settlement agreements regarding trash and
6 delivery and bottle dumping and those types of
7 issues?

8 MR. SMITH: I am broadly familiar
9 with them. I don't know that I could recite
10 them to you by memory.

11 MS. STERLING: Okay. Well, and
12 I'm not sure, is this where we will be
13 entering exhibits or not or mentioning
14 exhibits?

15 CHAIRPERSON MILLER: Really in
16 your own case you should enter the exhibits.
17 But you can show him something if you want to
18 ask him about it and show Mr. O'Brien what you
19 are showing him.

20 MS. STERLING: Oh, I think we gave
21 all of our exhibits --

22 CHAIRPERSON MILLER: You didn't

1 get a packet? Okay. Mr. O'Brien needs a copy
2 as well.

3 MS. STERLING: This would be
4 Exhibit 5.

5 MR. O'BRIEN: I would ask that no
6 questions be asked until I have an opportunity
7 to --

8 CHAIRPERSON MILLER: Okay. Could
9 you --

10 MR. O'BRIEN: -- go look at the
11 exhibit.

12 CHAIRPERSON MILLER: Okay. Let's
13 take a minute. Thank you.

14 MS. STERLING: Also 10 and 8.

15 CHAIRPERSON MILLER: I'm sorry?

16 MS. STERLING: 10 and 8.

17 CHAIRPERSON MILLER: Okay. Mr.
18 O'Brien, if you just want to look at Exhibit
19 6 that she is dealing with right now? Exhibit
20 5? Is it Exhibit 5?

21 MR. O'BRIEN: Yes, I have looked
22 at Exhibit 5.

1 CHAIRPERSON MILLER: Okay. Okay.

2 Go ahead, Mr. O'Brien.

3 MR. O'BRIEN: Objection.

4 Foundation.

5 CHAIRPERSON MILLER: Okay.

6 MR. O'BRIEN: Exhibit 5 appears to
7 be, on the first page, a list. The second
8 page that is dated April 7th.

9 CHAIRPERSON MILLER: Um-hum.

10 MR. O'BRIEN: And email dated
11 April 7th, two days ago.

12 CHAIRPERSON MILLER: Um-hum.

13 MR. O'BRIEN: Another email dated
14 -- I'm sorry, letter dated April 5, an email
15 dated April 8th. We've got a letter dated
16 April 5, a letter dated April 7th.

17 CHAIRPERSON MILLER: Um-hum.

18 MR. O'BRIEN: This witness is not
19 the author of any of these documents. So
20 asking him what they say is absent foundation.

21 CHAIRPERSON MILLER: I agree. I
22 mean, I don't think it is --

1 MS. STERLING: It's related to --

2 CHAIRPERSON MILLER: You can't ask
3 him what is in the documents if they aren't
4 his documents.

5 MS. STERLING: Okay.

6 CHAIRPERSON MILLER: I thought you
7 were going to show him something like a
8 picture or whatever and ask a question about
9 it.

10 MS. STERLING: These are
11 businesses who have settlement agreements with
12 indoor trash provisions in them from ANC-2B.

13 CHAIRPERSON MILLER: I'm sorry,
14 what?

15 MS. STERLING: So these are
16 businesses that have settlement agreements
17 with ANC-2B that require indoor trash
18 management. These are those businesses who
19 have signed settlement agreements with the--

20 CHAIRPERSON MILLER: Okay. So but
21 you are not testifying and Mr. Smith isn't
22 testifying to these. You can ask him if he

1 has personal knowledge of what is in here.

2 MS. STERLING: I asked him if he
3 was familiar with the settlement agreements
4 that the surrounding businesses have.

5 MEMBER ALBERTI: I think what the
6 protestants are getting at is you want to know
7 from Mr. Smith of the establishments on this
8 list, which ones have settlement agreements
9 and what is contained in those settlement
10 agreement? Is that what you are getting at?

11 MS. STERLING: Yes. Well, we
12 know. We were asking him if he knew.

13 MEMBER ALBERTI: Right, right,
14 right, right, right. So why don't you go
15 ahead and ask him that?

16 MS. STERLING: Do you know these
17 businesses who have submitted these letters,
18 do you know what is in their settlement
19 agreements regarding trash?

20 MR. SMITH: I'll do my best.

21 CHAIRPERSON MILLER: Well, could I
22 just -- I haven't studied this document yet,

1 but is there a difference between when you say
2 these establishments? Do you mean the ones
3 that are listed on the front page? Are they
4 the same as the ones that --

5 MS. STERLING: Yes.

6 CHAIRPERSON MILLER: -- have
7 letters?

8 MS. STERLING: The letters are
9 attached.

10 CHAIRPERSON MILLER: Okay.

11 MR. SMITH: So I'm going to be
12 able to partially answer your question. So
13 out of the five businesses that are listed on
14 the front of your page --

15 MR. O'BRIEN: What is the
16 relevance of this? Signing a settlement
17 agreement is not a protest issue. So what
18 does it matter if somebody else signed a
19 settlement agreement?

20 CHAIRPERSON MILLER: Okay. Thank
21 you. What's the relevance of this line of
22 questioning?

1 MS. STERLING: We are seeking
2 conditions in the settlement agreement for
3 things like trash management.

4 CHAIRPERSON MILLER: Okay. I
5 understand that.

6 MS. STERLING: Reschedules.

7 CHAIRPERSON MILLER: How does your
8 questioning about this document lead to
9 whether or not a condition regarding trash
10 management should be imposed in this case for
11 peace, order and quiet?

12 MS. STERLING: Because the rest of
13 the businesses in the area have complied with
14 those provisions.

15 CHAIRPERSON MILLER: I don't think
16 that shows it personally. Do others?

17 MEMBER ALBERTI: Well, I think the
18 relevance of it is that businesses -- it's not
19 just citizens, but other business owners -- if
20 they can show, and I don't know if they can,
21 but if they can show that other business
22 owners have concerns about how trash is

1 managed, that may have some relevancy.

2 However, those business owners
3 aren't here, but I think the relevancy is that
4 the direction they are going in this is to try
5 to convince us that other business owners have
6 concerns about trash control and what those
7 concerns are. And they are using them as
8 peers, they are business owners, so there are
9 peers of this.

10 CHAIRPERSON MILLER: Okay. What
11 does Mr. Smith have to do with this?

12 MEMBER SILVERSTEIN: Mr. Smith is
13 an ANC Commissioner.

14 CHAIRPERSON MILLER: I don't, you
15 know --

16 MEMBER ALBERTI: He's laying a
17 foundation for these letters. I'm not saying
18 we're accepting these letters, but apparently
19 these letters talk to -- talk about these
20 people and their concerns. And it's just
21 further -- the fact that they signed the
22 settlement agreement is their evidence that

1 they are on board with some controls, I guess.

2 CHAIRPERSON MILLER: Okay.

3 MEMBER ALBERTI: I don't really
4 know.

5 CHAIRPERSON MILLER: Why don't --

6 MEMBER ALBERTI: I'm guessing.

7 CHAIRPERSON MILLER: I understand
8 the protestants have a document that they are
9 going to want to submit, but I just don't
10 understand why --

11 MEMBER SILVERSTEIN: Madam Chair?

12 CHAIRPERSON MILLER: -- we are
13 spending time on Mr. Smith with respect to
14 your document.

15 MEMBER ALBERTI: That's all he is
16 doing is testifying which ones have settlement
17 agreements and what might be in the settlement
18 agreements. It won't take that long if they
19 just get to it.

20 CHAIRPERSON MILLER: Okay.

21 MEMBER JONES: Madam Chair?

22 MEMBER ALBERTI: Damn.

1 CHAIRPERSON MILLER: He's not even
2 their witness.

3 MEMBER JONES: Madam Chair?

4 CHAIRPERSON MILLER: Yes?

5 MEMBER JONES: I think that the
6 relevance would be peace, order and quiet. If
7 they have a rodent problem in the alley
8 because of the trash in the alley, then that
9 would discourse the peace in the community.

10 CHAIRPERSON MILLER: I agree with
11 that. If I heard testimony about rodents in
12 the alley next to Amsterdam Falafel, that
13 would be relevant, but, okay.

14 MS. STERLING: Eventually we will
15 get there.

16 CHAIRPERSON MILLER: Okay.

17 MR. O'BRIEN: And I point out
18 these letters, they are styled by protestant
19 as neighbors. I style them as competitors.

20 CHAIRPERSON MILLER: Okay.

21 MR. O'BRIEN: And that illustrates
22 why it is unfair that I can't cross-examine

1 people as to their motives.

2 CHAIRPERSON MILLER: Um-hum.

3 MR. O'BRIEN: And I just will
4 throw in also --

5 CHAIRPERSON MILLER: Okay.

6 MR. O'BRIEN: -- April 7th, Monday,
7 April 8th, April 7th --

8 MEMBER SILVERSTEIN: Madam Chair?

9 MR. O'BRIEN: -- belies the notion
10 that these things --

11 MEMBER SILVERSTEIN: Madam Chair?

12 CHAIRPERSON MILLER: We just said
13 that --

14 MR. O'BRIEN: -- are not listed
15 because someone didn't know how to fill out a
16 form.

17 MEMBER SILVERSTEIN: Madam Chair,
18 I would underscore anything that was collected
19 within the past week should not possibly be
20 allowed in, because it was not part of -- you
21 know, it's one thing to not specifically
22 include something in the PIF and to grant

1 slack on that. It is something else to be
2 collecting things that are evidence to be part
3 of the case during that seven day period --

4 CHAIRPERSON MILLER: Um-hum.

5 MEMBER SILVERSTEIN: -- while both
6 sides are supposed to have the PIF in here.

7 CHAIRPERSON MILLER: Okay. All I
8 want to say --

9 MEMBER SILVERSTEIN: It's just a
10 matter of procedural fairness.

11 CHAIRPERSON MILLER: Okay. As
12 clarification, we have not admitted this
13 exhibit yet. What we said before was we
14 weren't just going to exclude them as a matter
15 of course, based on the fact that they were
16 letters, but we haven't admitted them yet.
17 And we will consider those arguments.

18 So you are not moving to admit it
19 right now, are you?

20 MS. STERLING: Thank you.

21 CHAIRPERSON MILLER: You are just
22 cross-examining the witness?

1 MS. STERLING: Just if he is
2 familiar with the terms of the settlement
3 agreements regarding the trash management.

4 MR. SMITH: Can I answer the
5 question?

6 CHAIRPERSON MILLER: I'm sorry,
7 what?

8 MS. STERLING: If he is familiar
9 with the terms of the settlement agreements
10 regarding trash management.

11 CHAIRPERSON MILLER: For each of
12 these competitors?

13 MS. STERLING: Each of these.

14 CHAIRPERSON MILLER: Or whatever,
15 neighbors, competitors?

16 MS. STERLING: Businesses.

17 MR. SMITH: So may I answer the
18 question?

19 CHAIRPERSON MILLER: Okay.

20 MEMBER ALBERTI: Yes, finally.

21 CHAIRPERSON MILLER: Do you know
22 the answer?

1 MR. SMITH: I guess I would just--

2 CHAIRPERSON MILLER: Do you know
3 it off the top of your head?

4 MR. SMITH: -- want to point out--
5 I don't know the specifics, but I can tell you
6 who has a settlement agreement on this list
7 and who doesn't.

8 CHAIRPERSON MILLER: Okay.

9 MR. SMITH: For example, Douglas
10 Auto Repair is an auto repair shop, so I don't
11 believe they have a settlement agreement with
12 this Board. The bed and breakfast, I believe,
13 does not have a settlement agreement with this
14 Board. Lupo Verde does not have a settlement
15 agreement provided by this Board. Tacqueria
16 Nacional and Policy Restaurant do have
17 settlement agreements as part -- as
18 stipulations of their liquor licenses.

19 I believe they have clauses in
20 there about trash, though like I said, I could
21 not recite them for you specifically.

22 MS. STERLING: Okay. And so are

1 you saying on the record that Lupo Verde does
2 not have a settlement agreement?

3 MR. SMITH: The last time I asked
4 ABRA for a list and copy of every settlement
5 agreement in my Single Member District, they
6 sent them to me and it did not include
7 Tacqueria. That is the extent to my knowledge
8 of whether they have a settlement agreement or
9 not.

10 MS. STERLING: Thank you. Okay.
11 My next question, you know, was that -- in May
12 22, 2013 when we were talking about the
13 moratorium in this area in your testimony, can
14 you tell me what tools you suggested would
15 help the residents deal with some of these
16 peace, order, quiet, noise and trash issues?

17 MR. SMITH: The Dupont Circle ANC
18 noted several tools at the disposal of
19 residents and neighbors that could help to
20 address concerns over peace, order and quiet,
21 parking and other things. I believe we talked
22 about -- you know, without having it in front

1 of me and it being a year ago, if you have it
2 there, I would be happy to read it.

3 I know we did say that settlement
4 agreements are a tool that can be used. Well,
5 thank you.

6 MEMBER ALBERTI: Now, wait, wait.

7 MR. SMITH: Settlement agreements
8 are a tool --

9 MEMBER ALBERTI: Wait, wait, wait.

10 MR. SMITH: -- that can be --

11 MEMBER ALBERTI: Don't you want to
12 see a copy of this Mr. O'Brien?

13 MR. O'BRIEN: I want to go home
14 some time today.

15 MEMBER ALBERTI: Well, she is -- I
16 know. She is just showing him, the --

17 CHAIRPERSON MILLER: But --

18 MEMBER ALBERTI: -- witness, an
19 exhibit and counsel for the applicant wasn't
20 shown the exhibit.

21 MR. O'BRIEN: I agree. It's
22 improper. On the other hand, Ms. Sterling has

1 made it clear she is not an attorney.

2 MS. STERLING: It's his testimony.

3 MR. O'BRIEN: Yeah. And from her
4 description of it --

5 MEMBER ALBERTI: Okay.

6 MR. O'BRIEN: -- I would say it's
7 testimony.

8 MEMBER ALBERTI: Okay.

9 MR. O'BRIEN: I'm sure
10 Commissioner Smith will --

11 MEMBER ALBERTI: Fine.

12 MR. O'BRIEN: -- say if it's not.

13 MEMBER ALBERTI: All right.

14 CHAIRPERSON MILLER: For the
15 record --

16 MR. O'BRIEN: But you are correct.

17 CHAIRPERSON MILLER: -- could you
18 identify the document that was handed to you
19 by Ms. Sterling?

20 MR. SMITH: Yes. This is a copy
21 of my testimony before the ABC Board regarding
22 a proposed liquor license moratorium at 14th

1 and U Streets on May 22, 2013.

2 CHAIRPERSON MILLER: Okay.

3 MR. SMITH: And I'll just --

4 MR. O'BRIEN: The record should be
5 clear. Can I ask, Ms. Sterling, is this --

6 MS. STERLING: Yes.

7 MR. O'BRIEN: -- your Exhibit No.
8 3?

9 MS. STERLING: Yes, yes.

10 MR. O'BRIEN: Okay. So the
11 witness has been shown Protestant's Exhibit
12 No. 3.

13 MR. SMITH: In answering your
14 question, I will read a paragraph from my own
15 testimony from last year, which is that "ANC-
16 2B believes that other current tools exist and
17 other creative solutions should be pursued to
18 address the concerns raised in the petition,
19 including enforcement of the existing ARTS
20 Overlay, use of settlement agreements,
21 encouraging reimbursable police details and
22 specialized police units in the area and a

1 series of dedicated taxi stands for the zone."

2 MS. STERLING: Great. Thank you.

3 MR. SMITH: Yes, ma'am.

4 MS. STERLING: In our discussion
5 previously on this, you had supplied three
6 reasons why ANC-2B supported this license.
7 Can you tell me -- and all these reasons --
8 can you tell me what those three reasons were?

9 MR. SMITH: No, I can't. Not with
10 the email I sent you not in front of me. I
11 just don't want to be wrong.

12 MS. STERLING: Did any of those
13 reasons have --

14 MR. SMITH: That's all.

15 MS. STERLING: -- to do with
16 peace, order and quiet for the neighbors?

17 MR. SMITH: In support of the
18 license? I don't think so. I'm going to say
19 I don't think so. You're talking about a
20 detriment to peace, order and quiet?

21 MS. STERLING: Yes, if there were
22 any concerns that were addressed.

1 MR. SMITH: I think one of the
2 reasons was that if there were concerns, we
3 found the operator of the establishment to be,
4 you know, above the board and a good operator.
5 And so if there were concerns, we were
6 confident that they could be addressed by
7 simply talking to him as opposed to
8 enforcement of a settlement agreement through
9 ABRA action.

10 MS. STERLING: Thank you.

11 CHAIRPERSON MILLER: Okay. Board
12 questions? I think you all covered them.
13 Thank you very much.

14 MR. SMITH: Thank you all.

15 (Whereupon, witness was excused.)

16 MR. O'BRIEN: I call Dane Cherry.

17 CHAIRPERSON MILLER: Okay. Good
18 evening.

19 MR. CHERRY: Hi.

20 Whereupon,

21 DANE CHERRY

22 was called as a witness by Counsel for the

1 Applicant, and having been first duly sworn,
2 assumed the witness stand and was examined and
3 testified as follows:

4 CHAIRPERSON MILLER: Okay. Thank
5 you.

6 DIRECT EXAMINATION

7 MR. O'BRIEN: Would you state your
8 full name, please?

9 MR. CHERRY: Dane Jeffrey Cherry.

10 MR. O'BRIEN: And, Mr. Cherry,
11 what is your relationship to Amsterdam
12 Falafelshop on 14th Street?

13 MR. CHERRY: I'm the franchisee of
14 the restaurant, the managing member.

15 MR. O'BRIEN: All right. Tell us
16 about Amsterdam Falafelshop.

17 MR. CHERRY: Basically, we are a
18 small quick, casual restaurant that sells
19 falafel sandwiches and salads and dutch fries,
20 that's what we are.

21 MR. O'BRIEN: You said small. How
22 small?

1 MR. CHERRY: Well, we are 1,800,
2 approximately, square feet of space.

3 MR. O'BRIEN: And what's your
4 total occupancy limit?

5 MR. CHERRY: 59 people.

6 MR. O'BRIEN: I'm going to show
7 you a succession of exhibits here.

8 Mr. Cherry, I'm first going to
9 show you what has been marked as Applicant's
10 Exhibit 1 for identification and ask you if
11 you can tell the Board what that is, what the
12 depicts?

13 MR. CHERRY: This is a view of our
14 restaurant from the front of the restaurant
15 towards the back survey lined. It's just a
16 show of our area. Our restaurant is 12 feet
17 wide for the first 20 feet or so and then it
18 widens to, approximately, 15 feet wide. So
19 it's just a pretty narrow building. It's
20 narrow and long.

21 We actually -- probably the reason
22 why we chose the building was because it is

1 typical of a building in Amsterdam, which is
2 narrow and long. I think it was the feel of
3 a restaurant you find -- a falafel shop you
4 find in Amsterdam.

5 (Whereupon, the document was
6 marked as Applicant Exhibit 1 for
7 identification.)

8 MR. O'BRIEN: I'll show you what
9 has been marked for identification as
10 Applicant's Exhibit No. 2. And can you tell
11 the Board what that depicts?

12 MR. CHERRY: Yes, that's a view of
13 our open area where we make falafel. I mean
14 there is very little to a restaurant. Again,
15 it's only falafels and fries, so we don't have
16 any stoves, ovens, anything like that. It's
17 just a simple line where you quick fry a
18 falafel and fries and serve it to our
19 customers. So that's just a certain area.

20 (Whereupon, the document was
21 marked as Applicant Exhibit 2 for
22 identification.)

1 MR. O'BRIEN: All right. Take a
2 look at Exhibit No. 3. Can you tell the Board
3 what that is?

4 MR. CHERRY: Sure. That's a
5 picture of our self-serve salad bar with your
6 toppings for falafels.

7 (Whereupon, the document was
8 marked as Applicant Exhibit 3 for
9 identification.)

10 MR. O'BRIEN: And now No. 4?

11 MR. CHERRY: 4 is the back of our
12 store where we keep our recycling and our
13 trash bin and our oil collection container.

14 (Whereupon, the document was
15 marked as Applicant Exhibit 4 for
16 identification.)

17 MR. O'BRIEN: Mr. Cherry, when
18 were these photographs taken?

19 MR. CHERRY: They were taken,
20 approximately, a week ago.

21 MR. O'BRIEN: All right. And with
22 respect to Exhibit Nos. 1 through 3, do they

1 fairly and accurately depict the present
2 interior of --

3 MR. CHERRY: Yes.

4 MR. O'BRIEN: -- the
5 establishment?

6 MR. CHERRY: Absolutely.

7 MR. O'BRIEN: Now, with respect to
8 Exhibit No. 4, which I believe you stated was
9 taken, approximately, one week ago?

10 MR. CHERRY: Correct.

11 MR. O'BRIEN: All right. Does
12 that photograph fairly and accurately depict
13 the condition of the trash and grease removal
14 cans --

15 MR. CHERRY: Absolutely.

16 MR. O'BRIEN: -- in the
17 surrounding area? And you took the photograph
18 one week ago?

19 MR. CHERRY: Absolutely.

20 MR. O'BRIEN: Has the condition of
21 the cans in the surrounding area as depicted
22 in No. 4 changed at all in the week since you

1 took the photograph?

2 MR. CHERRY: It has not.

3 MR. O'BRIEN: I move Applicant's
4 No. 1 through 4, Madam Chair.

5 CHAIRPERSON MILLER: Okay. Any
6 objection? Okay. Applicant's Exhibits 1
7 through 4 then are admitted into evidence.

8 (Whereupon, the documents marked
9 as Applicant Exhibit 1 through 4
10 were received in evidence.)

11 MR. O'BRIEN: Mr. Cherry, I'm
12 going to show you what has been marked as
13 Applicant's Exhibit No. 7 for identification.
14 Okay. Can you tell the Board what your
15 exhibit -- our Exhibit No. 7 is?

16 MR. CHERRY: Sure. Exhibit No. 7
17 is our entire menu, which is incredibly
18 limited.

19 MR. O'BRIEN: Limited to what?

20 MR. CHERRY: We well falafels and
21 we sell fries. I mean, there is -- that would
22 just cover it and a couple little, you know,

1 brownies and that's about -- and that's it.
2 I mean, we're a simple sandwich shop,
3 basically.

4 (Whereupon, the document was
5 marked as Applicant Exhibit 7 for
6 identification.)

7 MR. O'BRIEN: All right. And Mr.
8 Cherry, I'm going to show you what is marked
9 as plaintiff's exhibit no. -- I'm sorry, not
10 plaintiff, Applicant's Exhibit No. 8 and ask
11 if you can describe what that depicts?

12 MR. CHERRY: Sure. It's a layout
13 of our store. This is -- this was the build-
14 out, basically, the model that our store was
15 built from.

16 (Whereupon, the document was
17 marked as Applicant Exhibit 8 for
18 identification.)

19 MR. O'BRIEN: And does that fairly
20 and accurately depict the condition of the
21 store as eventually built-in today?

22 MR. CHERRY: Yes, it does.

1 MR. O'BRIEN: Madam Chair, I would
2 move Nos. 7 and 8.

3 CHAIRPERSON MILLER: I'm just
4 waiting to see 8. Okay. Do you have any
5 objection, protestants? Okay. Okay. Not
6 hearing any objections, 7 and -- Applicant's
7 Exhibits 7 and 8 are admitted.

8 (Whereupon, the documents marked
9 as Applicant Exhibit 7 and 8 were
10 received in evidence.)

11 MR. O'BRIEN: Thank you.

12 CHAIRPERSON MILLER: Okay.

13 MR. O'BRIEN: Madam Chair, just
14 for clarity purposes, there is no Applicant's
15 No. 5.

16 CHAIRPERSON MILLER: Okay.

17 MR. O'BRIEN: We go 1 through 4.

18 CHAIRPERSON MILLER: Um-hum.

19 MR. O'BRIEN: And then 6 through
20 8.

21 CHAIRPERSON MILLER: Okay. Thank
22 you.

1 MR. O'BRIEN: Thank you. Mr.
2 Cherry, I believe -- well, let me ask you this
3 question. If granted the license you have
4 applied for, will you serve beer and wine?

5 MR. CHERRY: No, just beer.

6 MR. O'BRIEN: And why just beer?

7 MR. CHERRY: Well, the whole idea
8 behind it is that we are a business, our
9 business is Amsterdam Falafelshop. So we
10 wanted to serve dutch beer to go with our
11 theme of being from Amsterdam. We wanted to
12 replicate a falafel shop in Amsterdam.

13 And the only reason why we are
14 offering beer at all is because our
15 competition on the street all has beer. And
16 though I don't think -- I don't expect to do
17 really more than 3 or 4 percent of our sales,
18 that 3 or 4 percent adds an additional 7 to 10
19 percent of food sales.

20 So the family of four may want to
21 go out and have dinner, get a quick bite or
22 that group of our people who are going out for

1 the night who may be going to a club or
2 something afterwards or the movies, if they
3 stop in to -- if they want to go out and get
4 something and someone wants a beer, they can
5 do so.

6 I mean, last Thursday was my
7 daughter's birthday. My family went out to
8 have dinner. I personally don't drink, so it
9 doesn't matter, but my wife wanted to go some
10 place where she could have a beer with dinner,
11 so we chose a place where we could have a
12 drink.

13 Well, we winded up spending \$100.
14 You know, \$7 of it was for beer, the rest was
15 for food. It's that group of people who I
16 want to serve. That additional percentage of
17 sales is what will make or break my business
18 profit-wise for me.

19 So that I think is an important
20 part of our business, even though the alcohol
21 sales themselves won't be that great, the
22 additional revenue that we will get from the

1 food from those people and their friends who
2 come, that's who I'm trying to reach and that
3 is what is important to me.

4 So I mean I'm opening -- I've been
5 open for two weeks doing very well, not good--
6 for those two weeks without the alcohol, but
7 I believe that that next level is what will
8 make me have money for my daughter to go to
9 college some day. If that makes sense.

10 CHAIRPERSON MILLER: Okay.

11 MR. O'BRIEN: Mr. Cherry, I
12 believe I heard you say that you are serving
13 two kinds of dutch beer?

14 MR. CHERRY: We will have two or
15 three kinds, that's all. We are only doing --

16 MR. O'BRIEN: In what sort of
17 containers will this beer be served?

18 MR. CHERRY: Only in cans. I
19 mean, purposefully, I wanted to go with cans
20 for several reasons. One is -- was I'm aware
21 of the noise volume of dumping trash at night
22 and so I want to keep that down.

1 The second reason is personally I
2 don't want to have risk of people breaking
3 glass in my business, so I would rather just
4 limit it to cans. Some people will not be
5 happy about it, but I think if someone wants
6 to come in and have a sandwich and have a
7 beer, they will drink it out of a can. I
8 don't think it makes that much of a
9 difference. That was why.

10 And to address the noise volume, I
11 mean, we don't take -- we are a small business
12 with a small footprint, so we -- it's not like
13 we accumulate trash and then take it out at
14 4:00 in the morning. We take it out as
15 needed. We are constantly cleaning the place
16 and I'm a fanatic about that and we are
17 constantly making sure the trash cans are
18 emptied on an ongoing basis throughout the
19 day, so it looks neat in there.

20 So it's not as if 3:00 in the
21 morning is going to come around and there's
22 suddenly going to be double trash. We take it

1 out as needed throughout the day. So there is
2 no more trash being taken out at 4:00 in the
3 morning than would be taken out at 4:00 in the
4 afternoon.

5 MR. O'BRIEN: What have you done,
6 if anything, to try to encourage your
7 employees for taking out trash to --

8 MR. CHERRY: Well --

9 MR. O'BRIEN: -- maintain some
10 form of decorum?

11 MR. CHERRY: -- we put up a sign
12 in the back asking them to stay quiet. I have
13 put up a sign in the back asking that if they
14 are going to smoke on a break, they don't go
15 out in the back and smoke, they smoke out on
16 14th Street. You can't smoke in the
17 restaurant, obviously, these days.

18 So go out and smoke in front, not
19 to slam the back door, not to slam the trash
20 cans, the containers themselves. I'm
21 incredibly aware of, you know, keeping the
22 place clean and so, you know, trash cans lids

1 must be closed at all times. Ask any of my
2 employees, they will tell you I'm a fanatic
3 about that.

4 You know, I believe in that. I
5 want all of the neighbors to like us. I want
6 all the neighbors to come in and be customers
7 and be friends of ours. I can't have that if
8 I'm not -- if I'm doing anything that could
9 possibly upset them. So I'm doing everything
10 that I can to comply with these neighbors.

11 What this has come down to is they
12 just want me to sign something I'm not willing
13 to sign, that's all.

14 MR. O'BRIEN: In the two weeks you
15 have been open, have you been able to discern
16 how much of your patronage is neighborhood
17 residents as opposed to people coming from
18 other areas?

19 MR. CHERRY: Surprisingly a lot.
20 I am actually shocked at how many families
21 have come in. It's a much stronger
22 residential area than I had anticipated. I

1 didn't anticipate the volume of people in the
2 neighborhood coming in that are coming in.

3 As a matter of fact, I have said
4 to people and I have apologized to them
5 because I don't have enough highchairs there,
6 because I didn't expect that to be, but we
7 have tremendous amounts of families coming in
8 there, especially Saturday and Sunday days,
9 which is, you know, a much busier time than I
10 have anticipated and just people coming in
11 really welcoming us to the neighborhood saying
12 that they have been watching us being built.

13 I'm actually surprised at how many
14 people have come in, because we really haven't
15 advertised. We don't have our outside signage
16 up yet. It's not complete. But they are
17 finding us and they seem to really enjoy us.
18 And you know, late nights is where we are
19 getting the people who -- it's interesting.

20 We are getting neighbors up --
21 neighbors and workers in the area certainly up
22 through, you know, 8:00 or 9:00. And after

1 that, we get late night people who are either
2 out and coming in for something to eat late
3 and a surprising amount of people, which is
4 really what I wanted to, which is just a
5 primary reason to stay open late, from people
6 who work in other restaurants, who are getting
7 off to work at 1:00 or 2:00 in the morning and
8 coming in.

9 I'm in the restaurant business
10 since 1979, to date myself somewhat, and in my
11 youth before I had my family, when I would
12 finish at 1:00 or 2:00 in the morning, you're
13 not ready to go home. I mean, you are young.
14 You have energy. You have been working. You
15 are racing. You want some place where you can
16 go and have something to eat. And that's what
17 this is all about.

18 I mean, we purposefully stopped
19 selling alcohol, I mean, as part of our hours
20 earlier than we are closing, because I'm not
21 a bar. I don't want people coming in and
22 drinking late, that's not what I'm about. I'm

1 about serving good food. I'm about -- I want
2 people to be able to have a beer if they want
3 throughout the day.

4 But late at night, I don't want to
5 deal with that hassle of people drinking late,
6 so I purposefully made that -- note that
7 stopping at a certain time selling alcohol, so
8 people who are either coming from bars or
9 coming from work can just have something to
10 eat, sort of wind down before they go home.

11 So that's the whole -- that's,
12 basically, my vision of how the alcohol would
13 work in our place.

14 MR. O'BRIEN: How many employees
15 does the business have on its payroll?

16 MR. CHERRY: Approximately, 20, 22
17 right now. It will settle down once we get
18 better at what we are doing and would
19 determine what we need, but, approximately 18
20 to 20 will be where we are.

21 MR. O'BRIEN: Okay. And how many
22 of those would work at any one time?

1 MR. CHERRY: As few as three or
2 four, as many as seven or eight right now.

3 MR. O'BRIEN: On your busiest
4 shifts, seven or eight?

5 MR. CHERRY: On our busiest
6 shifts, yes. And that will hopefully come
7 down to about six when we master what we are
8 doing.

9 MR. O'BRIEN: All right. To your
10 knowledge, of the 20 to 22 people on your
11 payroll, how many are residents of the
12 District of Columbia?

13 MR. CHERRY: I would say about 90
14 percent of them.

15 MR. O'BRIEN: Okay. And do you
16 know how your employees commute to work?

17 MR. CHERRY: Everyone that I can
18 recall offhand, all but one, either walk, take
19 bus, take public transportation, get dropped
20 off. There is only one that I know of who
21 actually drives to our area.

22 MR. O'BRIEN: All right. Now, you

1 have heard testimony about the trash cans and
2 grease recycling container in the alley in the
3 rear of your establishment.

4 MR. CHERRY: Yes.

5 MR. O'BRIEN: And you have
6 identified Exhibit No. 4 that we placed into
7 evidence.

8 MR. CHERRY: Yes.

9 MR. O'BRIEN: Okay. Did you talk
10 to this Pamela, I'm sorry, I'm drawing a blank
11 on her last name.

12 MR. CHERRY: Washington, I
13 believe.

14 MR. O'BRIEN: Yes, Pamela
15 Washington.

16 MR. CHERRY: Yes. Everybody who--

17 MR. O'BRIEN: From the DC
18 Government?

19 MR. CHERRY: Yes, yes. Everybody
20 who has come there has just sort of appeared.
21 The woman who came from ABRA, Ms. Washington,
22 they just suddenly showed up and said here is

1 my card, I'm here to look at, you know, your
2 establishment. So I didn't know ahead of
3 time. And she came in and looked around the
4 place and actually she walked in the back
5 door. She came through the back without me
6 knowing it.

7 And she looked at the place and
8 she said everything looks great. And she
9 looked at my neighbors that was behind the
10 wall and it looked terrible and you could see
11 rats in there underneath their dumpsters and
12 it was a mess in there. And I believe she
13 took pictures of that and had made comments to
14 me about that, my place looking so neat and
15 theirs looking badly.

16 But behind the wall, you can't
17 tell, so, you know, it just --

18 MR. O'BRIEN: Have you been issued
19 a citation by anybody --

20 MR. CHERRY: No.

21 MR. O'BRIEN: -- for the condition
22 of your --

1 MR. CHERRY: Not at all.

2 MR. O'BRIEN: -- trash area?

3 MR. CHERRY: Everybody who has
4 come in has said to us, has said to me it
5 looks great. You are keeping it neat. That's
6 my goal is to keep it that way. I realize
7 it's visible. Again, I get trash removal at
8 least six times. I have requested seven. I'm
9 hoping that that will be the case, but I can't
10 guarantee that, because of the service. I'm
11 trying, but again lids have to stay closed,
12 all trash has to be in the bins.

13 You know, we sweep it up as
14 necessary. We hose it down as necessary the
15 grounds. So, you know, I try and keep the
16 front sidewalk and the back sidewalk, we sweep
17 it every day. I mean, that's just part of our
18 procedure for opening our business is that we
19 take care of the areas not only in our store,
20 but outside of our store as well.

21 MR. O'BRIEN: Finally, were you
22 invited to a meeting of the Shaw-Dupont

1 Citizens Alliance to discuss your application?

2 MR. CHERRY: I was.

3 Unfortunately, I was after the first 45 days
4 lapsed of our posting our license application.
5 I know if -- I'm sure or I would expect that
6 since this alliance is so attuned to our
7 neighborhood that they would have known about
8 our application, the original application that
9 was posted there and would have said something
10 initially about not being notified as opposed
11 to waiting for the first 45 days to elapse and
12 then filing a protest, which then has had to
13 put another 45 days after that. It certainly
14 wasn't a friendly thing to do to a new
15 business coming in the neighborhood. But yes,
16 I was and I did attend the meeting.

17 MR. O'BRIEN: Okay. If I
18 suggested to you that the meeting was on
19 January 16, 2014, does that comport with your
20 understanding?

21 MR. CHERRY: I believe so. I
22 don't recall the exact -- I know it was after,

1 certainly after the ANC meeting.

2 MR. O'BRIEN: And when you went to
3 the meeting, who did you find there?

4 MR. CHERRY: There was myself and
5 one of my limited partners, Al Simon. There
6 was -- Elwyn was not there. His partner Ramon
7 was there. And you were there as well. And
8 I believe --

9 MR. O'BRIEN: Mr. Cherry, you have
10 to identify who.

11 CHAIRPERSON MILLER: Yes, for the
12 record.

13 MR. O'BRIEN: The transcript can't
14 say you were there.

15 MR. CHERRY: Oh.

16 MR. O'BRIEN: Are you referring to
17 Ms. Sterling?

18 MR. CHERRY: Yes, Ms. Sterling.

19 MR. O'BRIEN: Okay.

20 MR. CHERRY: I apologize.

21 MR. O'BRIEN: Ms. Sterling was
22 there.

1 MR. CHERRY: I apologize. Ms.
2 Sterling and, I believe, two or three other
3 members of their alliance and then one other
4 gentleman who was applying for a license for
5 a club and one individual who was against that
6 person who was applying for a license at a
7 club, because their music was blaring too loud
8 on their balcony. That was all.

9 MR. O'BRIEN: Well, how many
10 representatives or members of the Shaw-Dupont
11 Neighborhood Alliance in total were at this
12 meeting?

13 MR. CHERRY: I believe it was
14 four, possibly five, that was all. And nobody
15 else, basically. I expected someone like the
16 ANC when I went there and there was, you know,
17 70 people or so, but this was a very small
18 room and just a couple of people.

19 MR. O'BRIEN: Okay. Those are my
20 questions.

21 CHAIRPERSON MILLER: Okay. Cross,
22 Ms. Sterling?

1 MS. STERLING: Yes. Thank you.

2 CROSS-EXAMINATION

3 MS. STERLING: Have you ever
4 applied for a liquor license in the District
5 of Columbia in the past?

6 MR. CHERRY: I have not.

7 MS. STERLING: Can you tell me --

8 MR. CHERRY: Although I haven't
9 said that businesses I have been associated
10 with have, though I have not.

11 MS. STERLING: Okay. Thank you.
12 Can you tell me what the condition of the
13 building is when it -- sorry. Did you buy the
14 building or lease the building?

15 MR. CHERRY: Leased the building.

16 MS. STERLING: Can you tell me
17 what the condition of the building was when
18 you leased it?

19 MR. CHERRY: Yes, it was a
20 horrible building. I had to put in hundreds
21 of thousands of dollars to this building to,
22 you know, bring it up to where I could build

1 my business.

2 MS. STERLING: So you designed
3 your space?

4 MR. CHERRY: Oh, I had an
5 architect design it that way with my input.

6 MS. STERLING: This was your idea?

7 MR. CHERRY: Yes.

8 MS. STERLING: Okay. Can you tell
9 me how the size of this restaurant compares to
10 the size of the Adams Morgan restaurant?

11 MR. CHERRY: Sure. It's about --
12 it's hard to say. It's actually the same size
13 if you count their basement. We don't have a
14 basement. They have a basement. So the first
15 floor we have twice the space they have on the
16 first floor. They just have a basement that
17 we don't have.

18 MS. STERLING: Um-hum.

19 MR. CHERRY: So it's -- they
20 actually have more storage than we have. We
21 are very limited in storage. I actually have
22 things at my house, that I store at my house

1 because I don't have the space to store in the
2 store itself. We just don't have the
3 capacity, unfortunately.

4 MS. STERLING: And when you worked
5 to design this, what were your plans for about
6 managing the trash?

7 MR. CHERRY: My plans for managing
8 the trash were to do what we are doing
9 currently, because we couldn't possibly fit it
10 in. As I said, I don't have enough storage
11 now for all my things. I have to keep them at
12 my house, which is very limited.

13 MS. STERLING: And were you aware
14 of the fact that there was no outdoor trash
15 from the businesses in that alley?

16 MR. CHERRY: Well, in the alley,
17 there are very few businesses, first of all.
18 Certainly very few restaurants. So most
19 places don't have that. Secondly, most people
20 -- several places have back areas that are
21 closed off that we do not have in our
22 building. They actually have buildings that

1 have that space behind them.

2 I realize that the newer buildings
3 have it, but the newer buildings are built and
4 designed for trash to be kept in the
5 buildings, which I think is wonderful. Back
6 when this building was built in the late 1800s
7 or early 1900s, they weren't taking that into
8 consideration. So I didn't have that option,
9 unfortunately.

10 However, I did walk up and down,
11 oh from, all the way from P Street through the
12 alleys all the way up to T Street and there
13 are numerous, numerous businesses with trash
14 receptacles, very similar to mine, some
15 considerably larger than mine in the alleyways
16 that is the same continuous alleyway that goes
17 from P Street all the way up to T Street.

18 So suddenly -- certainly in this
19 area and the same thing on U street. You go
20 by U Street, I mean -- and, you know, I live
21 on Capitol Hill in Barracks Row on 8th and
22 there is -- that's all there are. I mean, the

1 majority of businesses in DC have the same
2 similar trash receptacles.

3 I will say that mine are neater
4 than 99 percent of the ones that are out
5 there, because I'm a fanatic about that.

6 MS. STERLING: And you were
7 concerned with the alley between S and T
8 Street, as the rest is not in our ANC. So in
9 that alley, are there any trash barrels?

10 MR. CHERRY: Other than -- you
11 mean other trash barrels in the alley itself?

12 MS. STERLING: Um-hum.

13 MR. CHERRY: Just public, just
14 people.

15 MS. STERLING: Oh, the public.

16 MR. CHERRY: Just personal ones
17 that are often in the alley, yes, not business
18 ones.

19 MS. STERLING: Okay. Are they on
20 public or private space?

21 MR. CHERRY: Same part of the
22 alley as mine.

1 MS. STERLING: And so your
2 building occupies 100 percent of the lot
3 itself, correct?

4 MR. CHERRY: My building? My
5 particular lot?

6 MS. STERLING: Your rental. The
7 building --

8 MR. CHERRY: Of the store, yes.

9 MS. STERLING: -- occupies 100
10 percent of the lot.

11 MR. CHERRY: That's correct.

12 MS. STERLING: So when you decided
13 to put trash in the alley, were you aware that
14 was public space?

15 MR. CHERRY: I don't know what
16 kind of space it's called, if it's called
17 public space, all I know is that that is where
18 90 percent of the trash for DC businesses are
19 kept. And that's where I kept it.

20 MS. STERLING: Maybe in other
21 areas.

22 MR. O'BRIEN: I'm sorry, was there

1 a question?

2 CHAIRPERSON MILLER: I couldn't
3 hear what she said.

4 MS. STERLING: Are you familiar
5 with DCMR 707, solid waste container, 707.9?

6 MR. CHERRY: I'm not. I am aware
7 that someone came out from --

8 CHAIRPERSON MILLER: Do you have a
9 copy for Mr. O'Brien? Do you want one, Mr.
10 O'Brien?

11 MS. STERLING: Yes.

12 MR. CHERRY: I am aware that
13 someone came out from Solid Waste, took
14 pictures, looked at the place and said you are
15 in compliance. I'm aware of that.

16 MS. STERLING: Can you read 707.9?

17 MR. CHERRY: Sure. I can read
18 that. "Grease held for recycle or disposal
19 shall be stored in a tightly sealed metal drum
20 with a capacity of not more than 55 gallons.
21 The grease contained in the area where the
22 grease is stored shall be free of spilled

1 grease. The grease container shall be stored
2 not less than 4 feet from any other vertical
3 object next to the wall, shelving or wood fuel
4 stacks."

5 MS. STERLING: Thank you. And so
6 now can you -- referring to your Exhibit No.
7 4, can you tell me how far from the wall that
8 is stored?

9 MR. CHERRY: Probably 6 inches.

10 MS. STERLING: So then you would
11 agree that's out of compliance with the
12 statute that you just read?

13 MR. CHERRY: I would agree that
14 Mrs. Washington said we were in compliance.

15 MS. STERLING: I didn't ask you
16 that question. I asked you is 6 inches in
17 compliance with that statute --

18 MR. CHERRY: According to that,
19 no.

20 MS. STERLING: -- you just read?

21 MR. CHERRY: But I don't know if
22 that's up to date or not.

1 MS. STERLING: Thank you. And a
2 second question on that same photograph. Can
3 you tell me where your building ends?

4 MR. CHERRY: Yes. I believe I
5 could. I don't know how you want me to
6 describe it. At the end of the orange bricks.

7 MR. O'BRIEN: I'm sorry, did you
8 say at the end of the orange bricks?

9 MR. CHERRY: Yes.

10 MS. STERLING: And so are all of
11 the containers in this photograph against your
12 building?

13 MR. CHERRY: They are not, but I
14 would be more than glad to move them down so
15 they are. I purposefully moved them down
16 there, because certain neighbors asked if I
17 could move them down slightly, so it would
18 make it easier for them to turn and I said
19 sure I would, because I wanted to be a good
20 neighbor.

21 But I would be glad to move them
22 back, if you would like me to.

1 MS. STERLING: Where would you
2 move the trash to?

3 MR. CHERRY: We have space further
4 down and I would just move one of these
5 cardboard portions.

6 MS. STERLING: Move one?

7 MR. CHERRY: One, if necessary,
8 yes, or I would also remove one of the
9 cardboard ones which is not a big deal. What
10 we would rather do by the way is just to
11 remove the ones that look like trash cans and
12 put a second dumpster there, which would be
13 much better for me and I would prefer to do.
14 I purposefully used those because they are
15 less obtrusive and they look nicer.

16 MS. STERLING: Um-hum.

17 MR. CHERRY: But I would be more
18 than glad to take those four out and put a
19 second dumpster there which would fit in your
20 space if you would prefer I do that.

21 MS. STERLING: Well, was one of
22 the people who asked you to move those the

1 resident who lives directly across from the
2 building in the rear?

3 MR. CHERRY: No, not that I
4 recall.

5 MS. STERLING: Have you had any
6 communications with the residents that is
7 directly behind the building?

8 MR. CHERRY: I said hello, that's
9 about it.

10 MS. STERLING: And in the
11 Inspector's report, you stated that you felt
12 there were restrictions that were being
13 imposed in the SA that you did not want in
14 your business. Can you elaborate what those
15 restrictions were?

16 MR. CHERRY: Well, it doesn't even
17 matter what the restrictions were per se. I
18 just object to the fact that you are trying to
19 control my business, that's my main objection.
20 There are laws and there are commissions and
21 there are organizations in place in DC that I
22 need to adhere to and listen to and they are

1 the ones who have the right to control what I
2 do.

3 If I'm not in compliance, then
4 they will let me know that I'm not in
5 compliance and I will become in compliance.
6 That's their job, that's why they we elected
7 them or hired them or created these
8 organizations. I don't believe that you, as
9 individuals, have the right to tell me what I
10 can or can't do. So that's my main belief,
11 first of all.

12 Secondly, you have -- you were
13 asking for the sun and the stars when it came
14 to what you wanted me to do, cut down my
15 hours, which I objected to, because --

16 MR. O'BRIEN: I'm going to
17 instruct the witness to stop, because he is
18 now getting into settlement negotiations.

19 CHAIRPERSON MILLER: Right.

20 MR. CHERRY: Okay.

21 CHAIRPERSON MILLER: Thank you.

22 MR. O'BRIEN: Which we know are

1 not admissible --

2 MR. CHERRY: Sorry.

3 MR. O'BRIEN: -- in this
4 proceeding.

5 MR. CHERRY: Sorry, sorry. So but
6 they asked specifically about they wanted me
7 to --

8 MR. O'BRIEN: I understand. Maybe
9 I should have objected earlier.

10 MR. CHERRY: Okay.

11 MR. O'BRIEN: Settlement
12 negotiations --

13 MR. FERRIS: That has already been
14 stated on the record.

15 MR. O'BRIEN: -- are confidential.

16 MR. FERRIS: We want to address
17 that. It has already been stated for the
18 record. He said that we asked him to adjust
19 his hours of operation. That we need to --

20 CHAIRPERSON MILLER: But --

21 MR. FERRIS: -- we want to be able
22 to --

1 CHAIRPERSON MILLER: Okay. Wait a
2 second.

3 MR. FERRIS: -- refute that.

4 CHAIRPERSON MILLER: Wait a
5 second.

6 MEMBER ALBERTI: No, please.

7 CHAIRPERSON MILLER: It is not
8 your turn.

9 MEMBER ALBERTI: You can't
10 testify.

11 CHAIRPERSON MILLER: Yeah. When
12 it is time for you to testify, you can. There
13 is nothing to argue about right now.

14 MS. STERLING: Right, right. No,
15 we were interested because it is in the
16 Investigator's report, so we wanted to know
17 what kind of restrictions he felt were being
18 imposed upon him that he didn't want in
19 relation to the Investigator's report, because
20 that's all she said and she didn't elaborate
21 further when we asked.

22 So we still don't really know. So

1 do you believe that the directly impacted
2 residents have any rights or ability to voice
3 their concerns?

4 MR. CHERRY: Sure I do. I don't
5 believe that I impact the residents. My store
6 faces 14th Street, that's where all the
7 business comes from. And they come in on 14th
8 Street and they leave 14th Street. It doesn't
9 impact the area around. I don't believe it
10 does.

11 MS. STERLING: Are you aware that
12 ABRA Guidelines for settlement agreements on
13 things that can and cannot be in settlement
14 agreements?

15 CHAIRPERSON MILLER: Okay. I want
16 to interrupt because it's 7:03 and I just want
17 to reiterate, you are now not in settlement.
18 You are now before the Board. And the
19 decision this Board is going to make is
20 whether or not, you know, to grant the license
21 with or without conditions.

22 And what we would be considering

1 is not your settlement negotiations, but
2 actual facts as to why a condition may or may
3 not be necessary for peace, order and quiet.

4 MS. STERLING: Okay.

5 CHAIRPERSON MILLER: Okay.

6 MS. STERLING: Thank you.

7 CHAIRPERSON MILLER: Okay.

8 MS. STERLING: So we would like to
9 ask questions about the photographs that we
10 have as exhibits for Mr. Cherry to identify.
11 Is that permissible at this time?

12 CHAIRPERSON MILLER: Yeah. You've
13 got to show it to Mr. O'Brien and if he has an
14 objection he will make it, but this is the
15 only time you have to be able to ask him.

16 MS. STERLING: Okay. What's the
17 number?

18 MR. FERRIS: Exhibit 5.

19 MS. STERLING: Exhibit 5 and
20 Exhibit 6.

21 CHAIRPERSON MILLER: Oh,
22 applicant's exhibits?

1 MS. STERLING: Yes.

2 CHAIRPERSON MILLER: Okay.

3 MS. STERLING: No, protestants.

4 CHAIRPERSON MILLER: Protestants
5 exhibits. So I have Protestant's Exhibit 5 as
6 those letters.

7 MS. STERLING: Oh, sorry.

8 MR. FERRIS: We would like to
9 enter Exhibit 1.

10 CHAIRPERSON MILLER: You don't
11 enter them now, just identify them.

12 MS. STERLING: Oh, identify.

13 CHAIRPERSON MILLER: Yes.

14 MS. STERLING: Exhibit 1 and 2.

15 MR. FERRIS: 2. And --

16 MS. STERLING: 1 and 2.

17 MR. O'BRIEN: I would love to see
18 copies of them.

19 CHAIRPERSON MILLER: Do you have
20 copies? A copy for --

21 MS. STERLING: Yes.

22 CHAIRPERSON MILLER: Okay. 1A,

1 1B, 1C?

2 MS. STERLING: Yes.

3 CHAIRPERSON MILLER: Okay. 1D,
4 1E. Which was Exhibit 1?

5 MS. STERLING: All of them.

6 CHAIRPERSON MILLER: Through what?

7 MS. STERLING: 1, Exhibit 1 and
8 Exhibit 2, there is multiple photos in each
9 exhibit.

10 CHAIRPERSON MILLER: They are in
11 Exhibit 2 somewhere?

12 MS. STERLING: Multiple photos in
13 Exhibit 1.

14 CHAIRPERSON MILLER: Oh, yes, 2A,
15 okay.

16 MEMBER ALBERTI: Did you give any
17 to Mr. O'Brien?

18 MS. STERLING: No. They have them
19 all back there.

20 CHAIRPERSON MILLER: Oh, are you
21 waiting?

22 MEMBER ALBERTI: Oh, we have all

1 of them. So we need to give a copy to Mr.
2 O'Brien.

3 MS. STERLING: Okay.

4 MEMBER ALBERTI: It's a novel
5 idea, but --

6 CHAIRPERSON MILLER: 2G. Okay.

7 MEMBER ALBERTI: 1 and 2.

8 CHAIRPERSON MILLER: 1 and 2 or 3
9 also?

10 MS. STERLING: 1 and 2. I have 1,
11 3, 4, 7 and 9.

12 MEMBER ALBERTI: You don't have 2?

13 MR. CHERRY: Multiple photos.

14 CHAIRPERSON MILLER: We have a 2,
15 but I need it.

16 MR. CHERRY: 2 is multiple photos,
17 right? Yeah.

18 CHAIRPERSON MILLER: Did you bring
19 seven copies?

20 MS. STERLING: Eight.

21 MR. FERRIS: Eight.

22 CHAIRPERSON MILLER: Eight?

1 Really? I don't know where they are all at.

2 Okay.

3 MR. O'BRIEN: I have no objection
4 to the witness looking at these. I may have
5 an objection if there is an effort at some
6 point to move them, but --

7 MS. STERLING: Martha, we need to
8 show them to -- do you want to hand those you
9 have, I'll show him? We need to show them to
10 the witness.

11 MEMBER ALBERTI: She needs another
12 copy, Martha.

13 MS. STERLING: Yeah.

14 MEMBER ALBERTI: That's hard to
15 say.

16 MS. STERLING: No, I'm good.

17 MEMBER ALBERTI: I know.

18 MS. STERLING: In Exhibit 1C we
19 talked about this. What does it show?

20 MR. CHERRY: Well, this would show
21 that somebody came and opened up my grease bin
22 and took a picture of it. That's what that

1 would show.

2 MS. STERLING: So are you saying
3 it's an unsecured grease bin?

4 MR. O'BRIEN: Objection. That's
5 not what he said.

6 CHAIRPERSON MILLER: Sustained.

7 MR. CHERRY: No. I said that
8 someone came and opened it up.

9 MS. STERLING: Does it have a lock
10 on it?

11 MR. CHERRY: It does not have a
12 lock on it.

13 MS. STERLING: Can anybody walk
14 down the alley and open it?

15 MR. CHERRY: Yes, anyone can and
16 they would be visible in my camera that I have
17 back there, which I have caught so far people
18 doing that, including another restaurant
19 dumping oil in it and I have since gone over
20 to them and said that I have a camera back
21 there and I have a camera and I have a sign up
22 that says "Don't dump your oil or trash here,

1 you are on video."

2 If I looked back, I could probably
3 see whoever took this and check the video and
4 see who opened that.

5 MS. STERLING: Right. That's
6 great.

7 MEMBER RODRIGUEZ: And then what
8 happens?

9 MS. STERLING: All right.

10 MEMBER RODRIGUEZ: What's the
11 accountability here?

12 MS. STERLING: Tell us what this
13 1E shows.

14 MR. CHERRY: No, I cannot. It
15 shows --

16 MR. O'BRIEN: 1E?

17 MR. CHERRY: I have no idea. It
18 looks like -- I don't know. Is it Mud? Is it
19 dirt? Is it water? I don't know what it is.

20 MR. FERRIS: It's oil.

21 MR. CHERRY: Well, we don't know
22 what --

1 CHAIRPERSON MILLER: Okay.

2 MR. CHERRY: I'll tell you if it's
3 oil --

4 CHAIRPERSON MILLER: Okay. Mr.
5 Ferris, you are out of order though.

6 MR. FERRIS: Oh, I apologize.

7 CHAIRPERSON MILLER: Really.
8 Okay.

9 MR. CHERRY: If it is, it's --

10 CHAIRPERSON MILLER: You are not
11 allowed to testify.

12 MR. CHERRY: -- certainly not from
13 my restaurant.

14 CHAIRPERSON MILLER: Okay.

15 MEMBER RODRIGUEZ: Can they prove
16 that is oil?

17 CHAIRPERSON MILLER: Okay.

18 MEMBER RODRIGUEZ: It could be
19 tire tracks.

20 CHAIRPERSON MILLER: Okay.

21 MR. CHERRY: What are you
22 referring to?

1 MS. STERLING: Oh, sorry, 3A.

2 CHAIRPERSON MILLER: 3A?

3 MR. O'BRIEN: 3A.

4 MR. CHERRY: Sure. I can tell you
5 what that is. That looks like it's a
6 flattened rat or a squirrel.

7 CHAIRPERSON MILLER: Eww.

8 MR. CHERRY: Which you will see up
9 and down alleys, all of those alleys
10 throughout there. I walk almost every day.
11 I park on either S Street, you know, generally
12 S Street and in walking through the alley
13 behind the next alleyway between Swann and S,
14 you will see the same thing. And I can -- I
15 would be glad to give you photographs of those
16 if you would like. I'll be glad to go take
17 them.

18 Unfortunately, it's an unfortunate
19 part of living in DC. I live in Capitol Hill.
20 I have rat traps in my backyard. I'm four
21 blocks away from any restaurant. And yet, my
22 dogs catch rats in their mouth in my backyard.

1 It's a sad state to say.

2 MS. STERLING: It's good not to
3 contribute to the problem.

4 MR. CHERRY: You're right. I
5 agree. That's why I keep my place so clean.

6 MS. STERLING: Good. And can you
7 tell me -- and this is 2E.

8 MR. O'BRIEN: 2E, thanks.

9 MR. CHERRY: Oh, okay. That is my
10 trash.

11 CHAIRPERSON MILLER: I'm sorry,
12 what exhibit?

13 MS. STERLING: 2E.

14 CHAIRPERSON MILLER: 2E.

15 MR. CHERRY: That's my trash and
16 it looks like the bin is slightly open.

17 MS. STERLING: And is all the
18 trash in the bin?

19 MR. CHERRY: Well, it's all in the
20 bin, yes. Is the top closed? No. Do I know
21 if anybody else did that to take this picture?
22 I honestly don't know, but I certainly

1 wouldn't put it past said individuals,
2 unfortunately. But --

3 MS. STERLING: So people what took
4 a picture and put extra trash in, is that what
5 you are saying?

6 MR. CHERRY: I'm saying it's a
7 possibility. I'm saying it's sad. I mean, I
8 try and -- you know, I certainly try and
9 police that as much as possible.

10 MS. STERLING: Thank you. Okay.
11 Thank you.

12 CHAIRPERSON MILLER: Okay. Board
13 questions?

14 MEMBER ALBERTI: Can we see the
15 pictures?

16 CHAIRPERSON MILLER: What?

17 MEMBER JONES: I heed the floor.

18 CHAIRPERSON MILLER: I just have--

19 MEMBER JONES: Have they been
20 admitted?

21 MEMBER ALBERTI: They haven't been
22 admitted, so I'm not sure we should be seeing

1 them until they are admitted.

2 CHAIRPERSON MILLER: Okay.

3 MEMBER ALBERTI: Technically.

4 Although, we veer from that all the time.

5 CHAIRPERSON MILLER: Do you have
6 some type of a contract or program for rodent
7 control?

8 MR. CHERRY: Yes, I do. I have a
9 monthly contact with Cropp Metcalf that
10 services not only the inside of my restaurant
11 on a monthly basis, but the outside as well.
12 I'm just a firm believer in that, whether it
13 is needed or not. Prevention is the best way.

14 So behind the dumpsters or
15 underneath the dumpsters are baited rat traps
16 to control them and they are checked monthly
17 and again, my restaurant is sprayed on a
18 monthly basis, because I don't want any kind
19 of, you know, bug. And I do that in my home
20 monthly just, again, because I'm crazy about
21 that. I'm a firm believer in that.

22 So, you know, I would be glad to,

1 you know, submit my contract with Cropp
2 Metcalf so you can see that, but I do have it
3 in place, yes.

4 CHAIRPERSON MILLER: Okay. And
5 also, what is your program with respect to
6 grease?

7 MR. CHERRY: For the grease?

8 CHAIRPERSON MILLER: What do you
9 do with your grease?

10 MR. CHERRY: Well, the way it
11 works, the way all the restaurants work now,
12 all the ones I'm associated with and ones that
13 I'm not, what we do is the grease now is
14 actually collected and then used for biofuel.
15 So it's recycled and we are, you know, firm
16 believers in recycling.

17 So what we do is we have a program
18 with a company that gives us the container,
19 that we pour in the used grease, which is
20 every few days, and then they come on a
21 regular basis and collect that and leave the
22 grease bin.

1 CHAIRPERSON MILLER: Okay. So
2 this is plaintiff's exhibit -- Applicant's
3 Exhibit No. 4?

4 MR. CHERRY: Yes.

5 CHAIRPERSON MILLER: Okay. So is
6 it -- one of the containers --

7 MR. CHERRY: It's the first one,
8 the closest one to your left.

9 CHAIRPERSON MILLER: -- has
10 biofuel. Okay. That's where the grease goes.

11 MR. CHERRY: Yes.

12 CHAIRPERSON MILLER: Okay. How
13 often do they pick it up?

14 MR. CHERRY: Well, they pick it up
15 as needed. And it depends on how often it is
16 filled. And there is a trap, you know, there
17 is only holes when you open it up as they did.
18 When you open it up, there is holes that the
19 grease pours down, so nothing can go into it.
20 Nothing wants to go into it and it's not -- it
21 doesn't attract rodents. There's nothing to
22 eat from it.

1 CHAIRPERSON MILLER: Okay.

2 MR. CHERRY: So we actually, as I
3 said, caught on film another restaurant
4 dumping in their grease and we went over to
5 them. We approached them. It was the Italian
6 restaurant on the corner, Verde -- Lupo Verde
7 and they actually fired that employee when
8 they said they would come over and clean the
9 area, because they had spilled some oil on it.
10 So if you saw anything in the alleyway further
11 down, it certainly wasn't from us.

12 We -- when the Inspector, who was
13 here, said that she saw water in front of it,
14 she did see water in front of it, because we--
15 I had them clean it, hose it down and use a
16 scrub brush if anything spills. I just --
17 again, that's -- I feel that is something we
18 should do to keep the area clean, so I have my
19 employees do that.

20 CHAIRPERSON MILLER: Okay. And I
21 think my last question is I thought I heard
22 you say that when you went to the ANC, there

1 were about 70 people there?

2 MR. CHERRY: Yes, yes, it was
3 packed.

4 CHAIRPERSON MILLER: Okay. So and
5 at that meeting you explained the concept of
6 your restaurant and your hours and stuff like
7 that?

8 MR. CHERRY: Absolutely.

9 CHAIRPERSON MILLER: Okay.

10 MR. CHERRY: Yes.

11 CHAIRPERSON MILLER: And were
12 there people opposed at that --

13 MR. CHERRY: No, they had great
14 support. It was great. I didn't know what to
15 expect. I was nervous. I have never been
16 through an ANC meeting before and as I was
17 walking back after explaining what it was,
18 everybody was giving me the thumbs up and
19 welcome to the neighborhood. So I was -- I
20 had been very pleasantly, you know, surprised
21 and happy by the support I have gotten from
22 the community.

1 And I can't tell you how many
2 people have come in since when they found out
3 that we were being protested for the liquor
4 license who have said we are behind you, that
5 group doesn't represent us. They represent a
6 small group.

7 I mean, the truth of the matter is
8 I could have signed this agreement and saved
9 myself thousands of dollars and time and had
10 my license and they have capitulated to
11 everything that I said I was willing to do.
12 They have come down from the --

13 CHAIRPERSON MILLER: Okay.

14 MR. O'BRIEN: Okay. Don't go into
15 settlement negotiations.

16 MR. CHERRY: Okay.

17 CHAIRPERSON MILLER: Yeah.

18 MR. CHERRY: But it -- at this
19 point, it's a matter of what I think is right
20 and just and fair and I just personally
21 believe that this -- that I will do everything
22 I can to make my restaurant successful. And

1 part of that is making sure that I am in
2 compliance. And if I'm not in compliance,
3 then those organizations and Government
4 organizations and groups that regulate these
5 things will come down on me and say you are
6 not in compliance.

7 And that's their job. I don't
8 think it's the job of anyone else. I wouldn't
9 do it to places in my neighborhood. I
10 wouldn't expect that to be done to me. I
11 mean, I think that I have shown that -- I hope
12 that I have shown that I'm trying as best I
13 can to do everything I can.

14 I put up the signs they requested.
15 I put in my handbook about not propping the
16 area. You know, we don't have loud music. We
17 don't have live entertainment. I'm not using
18 glass bottles. I'm stopping selling alcohol
19 early.

20 CHAIRPERSON MILLER: Oh, I have --

21 MR. CHERRY: When I was in the
22 meeting --

1 CHAIRPERSON MILLER: -- one other
2 question for you.

3 MR. CHERRY: Okay.

4 CHAIRPERSON MILLER: Sorry.

5 MR. CHERRY: No problem. I'm
6 sorry.

7 CHAIRPERSON MILLER: Because you
8 said hours. I want to ask you --

9 MR. CHERRY: Sure.

10 CHAIRPERSON MILLER: -- are there
11 other restaurants near you, bars, restaurants?

12 MR. CHERRY: Oh, sure, yes,
13 absolutely.

14 CHAIRPERSON MILLER: All right.
15 Are your hours that you are asking for later
16 than theirs or --

17 MR. CHERRY: Actually, there are
18 some that are later than us. Manny and Olga's
19 across the street is open until 5:00. Black
20 and Orange, the hamburger place is open until
21 5:00. JT, I believe it is, Cheesesteaks they
22 are open until 5:00. I mean, they are open

1 later than us most nights.

2 And we are open late significant
3 certainly, Taylor Gourmet is open until 3:30
4 in the morning. You know, we are not open as
5 late as some of these other places, but sure
6 we are open late. And you are welcome to come
7 and see. We are busy then and, as I said,
8 it's a nice mix. It's a mix of people who are
9 coming from the clubs and it's a nice mix of
10 people who are coming -- getting off work.

11 And again, we're not selling
12 alcohol then. That's not who we are. We're
13 not a bar. I mean, we are not going to hang.
14 We're not comfortable -- we don't even give --
15 have WiFi because I don't want people hanging
16 in there. We need to turn people over
17 quickly. We don't have many seats there. So
18 the idea is to get them out now. But if you
19 want to have a glass of beer, a can of beer
20 while you -- with your falafel instead of a
21 soda, I think you should be able to have that.

22 CHAIRPERSON MILLER: Okay. Thank

1 you. Any other questions? Any questions on
2 Board questions? Okay. Thank you very much.

3 MR. CHERRY: Thank you.

4 MR. O'BRIEN: Thank you. We have
5 completed our witnesses and our Exhibits 1
6 through 4 and 6 through 8 have been admitted,
7 so we will rest.

8 CHAIRPERSON MILLER: Okay.

9 MS. STERLING: So we will call our
10 witness, Soochon Radee.

11 CHAIRPERSON MILLER: Can you speak
12 up?

13 MS. STERLING: Soochon.

14 CHAIRPERSON MILLER: Okay.

15 MS. STERLING: Radee. Who will
16 testify about peace, order and quiet issues.

17 CHAIRPERSON MILLER: Okay. Good
18 evening.

19 MR. RADEE: Good evening.

20 Whereupon,

21 SOOCHON RADEE

22 was called as a witness by Counsel for the

1 Protestant, and having been first duly sworn,
2 assumed the witness stand and was examined and
3 testified as follows:

4 CHAIRPERSON MILLER: Okay. Have a
5 seat.

6 DIRECT EXAMINATION

7 MS. STERLING: Soochon, can you
8 tell me where you live, please?

9 MR. RADEE: I live at 1406 S
10 Street, N.W.

11 MS. STERLING: And how long have
12 you been there?

13 MR. RADEE: I have been there
14 since 2006.

15 MS. STERLING: Okay. And can you
16 tell me what you observed regarding businesses
17 and the peace, order, quiet issues that you
18 have experienced and what they are related to?

19 CHAIRPERSON MILLER: I'm sorry,
20 could you repeat? Would -- did you ask him if
21 he observed businesses?

22 MS. STERLING: Can you tell me

1 what peace, order and quiet issues you have
2 observed from the surrounding businesses that
3 have impacted --

4 CHAIRPERSON MILLER: Surrounding
5 him? Where he lives?

6 MS. STERLING: Yes.

7 CHAIRPERSON MILLER: Okay.

8 MR. RADEE: Okay. In the last
9 couple of years, there has been an increase in
10 a lot of disorderly conduct at night,
11 especially between Thursday and Sundays,
12 something from like 2:00 p.m. onward. I mean
13 2:00 a.m. onwards, excuse me. Like I stay up
14 late, but usually I go to bed at around 2:00
15 on the weekends and I have been woken up at
16 3:30 by loud drunk people trying to get back
17 to their cars and whatnot. And I just don't
18 think that's very acceptable.

19 MS. STERLING: Have -- since ANC-
20 2B has negotiated trash containment within the
21 buildings have you seen any changes in the
22 amount of rats and other trash issues in that

1 alley that runs between S and T Street?

2 MR. RADEE: Well, I live below S,
3 on the other side of S, so I can only speak to
4 my own house, but I know that the rats there,
5 they go everywhere. It's not just one alley
6 to the other, so I have -- I think that there
7 has been -- I think it comes and goes in
8 cycles.

9 There's also construction behind
10 my house, so that levels -- a lot of rats that
11 come out, so it's hard for me to tell exactly
12 what has been going on, but I know that there
13 has been a lot of rat activity and I called
14 the Department of Health actually several
15 times in the last six months for them to come
16 out and fix my rat issues.

17 MS. STERLING: Yes, in that alley
18 that runs between S and T, have you seen any
19 other outdoor trash bins?

20 MR. RADEE: No, I have not.

21 MS. STERLING: Thank you.

22 CHAIRPERSON MILLER: Is that it?

1 MS. STERLING: Yeah. Unless we
2 can enter our -- can we enter our exhibits now
3 from the other residents in the impacted area?

4 CHAIRPERSON MILLER: Yes, you can
5 move that they be admitted and then we will
6 make a decision on them.

7 MS. STERLING: So --

8 CHAIRPERSON MILLER: What do you
9 move?

10 MR. O'BRIEN: I'm --

11 MS. STERLING: -- exhibit --

12 CHAIRPERSON MILLER: I'm sorry,
13 Mr. O'Brien, do you have an objection?

14 MR. O'BRIEN: I'm just confused
15 procedurally. Are we finished with this
16 witness?

17 CHAIRPERSON MILLER: We are not
18 finished with this witness.

19 MR. O'BRIEN: Oh, okay.

20 CHAIRPERSON MILLER: Because you
21 haven't crossed, right?

22 MR. O'BRIEN: Well, I was not

1 going to ask any questions.

2 CHAIRPERSON MILLER: Oh, okay.

3 MR. O'BRIEN: But what I'm trying
4 to figure out is are these exhibits being
5 moved through this witness or is this
6 something different?

7 CHAIRPERSON MILLER: Are you --

8 MS. STERLING: It's the supporting
9 evidence from other impacted --

10 CHAIRPERSON MILLER: It has
11 nothing to do with this witness?

12 MS. STERLING: Not as an
13 individual.

14 CHAIRPERSON MILLER: Okay. So I
15 think where Mr. O'Brien is probably going is
16 let's finish with this witness and then we
17 will get to your documents. Is that what you
18 are saying? That would be the better
19 procedure. It would be the better procedure.

20 MR. O'BRIEN: Thank you, Madam
21 Chair.

22 CHAIRPERSON MILLER: Okay.

1 MS. STERLING: Thank you.

2 CHAIRPERSON MILLER: Mr. O'Brien,
3 you don't have any cross-exam?

4 MR. O'BRIEN: I have no cross-
5 examination.

6 CHAIRPERSON MILLER: Okay. Do
7 Board Members have questions for this witness?
8 No, not hearing any. We don't either, so
9 thank you very much.

10 (Whereupon, witness was excused.)

11 CHAIRPERSON MILLER: Okay.

12 MS. STERLING: We would like to
13 call Elwyn Ferris.

14 CHAIRPERSON MILLER: Wait. You're
15 going to call another witness? We were under
16 the impression that he was going to be your
17 only witness.

18 MS. STERLING: No.

19 CHAIRPERSON MILLER: And that was
20 part of the reasoning for our not striking
21 him. Part of the reason, but so --

22 MR. FERRIS: We are not sure of

1 how we can refute much of what was said here
2 today, which was inaccurate. How do we --
3 what is our opportunity to refute that?

4 CHAIRPERSON MILLER: This is your
5 opportunity.

6 MEMBER ALBERTI: You should have
7 prepared before you got here.

8 MR. FERRIS: What did you -- I'm
9 sorry?

10 MEMBER ALBERTI: You should have
11 been prepared before you got here.

12 MS. STERLING: So I guess we need
13 to enter exhibits into evidence, which would
14 be exhibits --

15 MEMBER JONES: Just to be clear --

16 CHAIRPERSON MILLER: Yeah.

17 MEMBER JONES: -- we have
18 officially denied your ability to put on
19 another witness. Is that correct, Madam
20 Chair?

21 MS. STERLING: Right. The officer
22 from Shaw-Dupont, yeah.

1 MEMBER JONES: Yes. I just want
2 to make sure.

3 CHAIRPERSON MILLER: No. I don't
4 -- what I said was that part of the basis for
5 our ruling on your other witness was that we
6 understood he was your only witness. So now,
7 you are presenting something different. And
8 so Mr. Jones is asking me if that meant we
9 already precluded him.

10 I don't know. We didn't actually
11 reach it because we didn't know there was
12 another witness.

13 MEMBER ALBERTI: So are you
14 putting up --

15 CHAIRPERSON MILLER: So --

16 MEMBER ALBERTI: -- are you
17 deciding this?

18 CHAIRPERSON MILLER: I'm not
19 deciding, no. I'm just saying I don't think
20 we decided it yet, because we didn't know.

21 MEMBER JONES: So what I'm hearing
22 now, they asked if they could put on a witness

1 and I think they walked away with the
2 impression that they could not.

3 CHAIRPERSON MILLER: Oh, is that
4 why you are saying you can't refute it?

5 MEMBER JONES: So I just want to
6 make sure they are clear --

7 MS. STERLING: Yes.

8 MEMBER JONES: -- because if this
9 goes to the --

10 CHAIRPERSON MILLER: Okay.

11 MEMBER JONES: -- Court of
12 Appeals, I --

13 CHAIRPERSON MILLER: Right.

14 MEMBER JONES: -- want it clearly
15 understood what we did or did not do and it
16 wasn't clear --

17 CHAIRPERSON MILLER: No.

18 MEMBER JONES: -- based on where
19 we are right now.

20 CHAIRPERSON MILLER: Okay.

21 MEMBER ALBERTI: And procedurally,
22 I think we ought to allow Mr. O'Brien to

1 object. We should ask Mr. O'Brien if he has
2 any objections. And then the either Chair or
3 the Board should make the decision.

4 CHAIRPERSON MILLER: Okay. First
5 then, we should hear from the protestant why
6 we should allow Mr. Ferris to testify. And
7 let me ask --

8 MEMBER ALBERTI: I don't know.
9 Did he have an objection?

10 CHAIRPERSON MILLER: Well, I don't
11 know what he is going to testify to. Do we?

12 MEMBER JONES: It's their case?

13 MEMBER ALBERTI: It's their case.

14 MEMBER JONES: So I'm trying to
15 figure out, they are asking for a witness. We
16 haven't heard any objection. Did we say that
17 that person couldn't come up?

18 CHAIRPERSON MILLER: No.

19 MEMBER JONES: Okay.

20 CHAIRPERSON MILLER: We just were
21 surprised because --

22 MEMBER JONES: Okay. Surprised is

1 not necessarily a reason to not allow someone
2 up.

3 MEMBER ALBERTI: Correct.
4 Exactly.

5 MEMBER JONES: Procedurally, where
6 are we?

7 CHAIRPERSON MILLER: Do you have
8 an objection?

9 MEMBER JONES: There has been no
10 objection. They wanted to put on a witness.
11 And we rule.

12 CHAIRPERSON MILLER: No. We
13 haven't ruled.

14 MEMBER JONES: Okay.

15 CHAIRPERSON MILLER: We've only
16 had Board Members really speaking to this.

17 MR. O'BRIEN: Okay. My objection,
18 okay --

19 CHAIRPERSON MILLER: You have an
20 objection?

21 MEMBER JONES: Okay. Good. So
22 now we have an objection.

1 MR. O'BRIEN: I object.

2 MEMBER JONES: I didn't say he
3 objected. Please, sir.

4 MR. O'BRIEN: My objection was
5 lodged earlier and rejected by the Board. I
6 objected to trial by ambush.

7 MEMBER JONES: Okay.

8 MR. O'BRIEN: And this is why, for
9 instance, Mr. Ferris should have been listed
10 on the Protest Information Form. The Board
11 has ruled on that objection. So that's the
12 law of the case on that one.

13 MEMBER ALBERTI: Understood.

14 MR. O'BRIEN: It is for the Board
15 to determine and not for me whether the
16 protestants should be allowed to call another
17 witness.

18 MS. STERLING: So my question is
19 does the -- can the association testify, the
20 protestant, that's the association?

21 CHAIRPERSON MILLER: Okay.

22 MEMBER ALBERTI: Do you want to

1 talk about this or do you want --

2 CHAIRPERSON MILLER: No. I just
3 want to hear -- you know, talk this out for a
4 minute before we go back. I understood and
5 you were -- you all were in this hearing room
6 when we said so how many witnesses? Are you
7 as a party going to testify? And you said no,
8 we only have one witness.

9 MS. STERLING: Sorry, we
10 completely misunderstood. You as a party,
11 sorry, it's like -- sorry that's language.

12 CHAIRPERSON MILLER: Okay.

13 MS. STERLING: We thought that as
14 a party you always testified. We didn't
15 realize. We had one witness. We didn't
16 realize you as a party is another witness. We
17 always thought that was just what you always
18 did.

19 CHAIRPERSON MILLER: And --

20 MS. STERLING: So that was our
21 misunderstanding.

22 CHAIRPERSON MILLER: Yeah, it was

1 a big misunderstanding.

2 MS. STERLING: Yes.

3 CHAIRPERSON MILLER: And Mr.
4 Ferris?

5 MR. FERRIS: Yes.

6 CHAIRPERSON MILLER: So what is it
7 that you would testify to if you were allowed
8 to testify?

9 MR. FERRIS: I would be testifying
10 to my knowledge of the support that there is
11 in the community to, I'm afraid I'm going to
12 say the wrong thing -- what we are seeking to
13 accomplish here. To the provisions we are
14 seeking to be imposed on the license.

15 And I would like the opportunity
16 to address to the board what I have found out
17 from the Department of Public Works regarding
18 the trash that is in the public alley, and I
19 could refute a couple of things that were
20 said, but I don't know whether it is important
21 or not to do that.

22 But I just wanted to express to

1 the Board my knowledge of what is going on in
2 the back and what the regulations say.

3 CHAIRPERSON MILLER: Your
4 knowledge of what's going on what?

5 MR. FERRIS: In the public space.
6 What I have been informed of by the Department
7 of Public Works regarding these trash and
8 grease receptacles.

9 CHAIRPERSON MILLER: Okay.

10 MR. O'BRIEN: Madam Chair?

11 CHAIRPERSON MILLER: Um-hum?

12 MR. O'BRIEN: It seems that the
13 sum of what Mr. Ferris proposes to testify to
14 is what other people think and what other
15 people say.

16 CHAIRPERSON MILLER: Um-hum.

17 MR. O'BRIEN: And I suggest that
18 cannot form substantial evidence upon which
19 this Board can make a decision and, therefore,
20 should not be allowed.

21 CHAIRPERSON MILLER: Okay.

22 MR. O'BRIEN: If there were people

1 who felt strongly enough about this to oppose
2 it, they should have been here today, after
3 having been listed on the Protest Information
4 Form.

5 MEMBER ALBERTI: I think Mr. Jones
6 has --

7 CHAIRPERSON MILLER: Okay. Mr.
8 Jones?

9 MEMBER ALBERTI: -- something.

10 MEMBER JONES: I would be in favor
11 of allowing the witness to testify, based on
12 the Board's earlier decision regarding or
13 related to the PIF situation. Allow the
14 individual to testify and if there becomes a
15 hearsay objection, then we can rule on that
16 hearsay objection at the time that it comes.

17 But I think we are spending far
18 more time trying to determine whether or not
19 to allow this witness than the amount of time
20 it's going to take him to be up here on the
21 stand and testifying. So we can at least
22 address it in a more efficient fashion.

1 MEMBER RODRIGUEZ: I don't know
2 about that.

3 MEMBER ALBERTI: I will just voice
4 my opinion real quickly. I don't think we
5 should allow the witness to testify, because--

6 CHAIRPERSON MILLER: Yes.

7 MEMBER ALBERTI: -- I --

8 CHAIRPERSON MILLER: You would or
9 would not?

10 MEMBER ALBERTI: Would not. Not
11 allow him to testify.

12 CHAIRPERSON MILLER: Okay.

13 MEMBER ALBERTI: Mr. O'Brien has a
14 point that -- which I empathized with earlier,
15 even though I allowed the one witness to come
16 forward, is that he was ambushed. I
17 understand that --

18 CHAIRPERSON MILLER: Okay.

19 MEMBER ALBERTI: -- but we have to
20 make some allowances. But then to tell us
21 that -- to let him go forward and present his
22 case on the predicate that there is only going

1 to be one witness and further ambush him, I
2 think is unjust to the applicant.

3 CHAIRPERSON MILLER: Okay.
4 Others?

5 MEMBER JONES: Well, then I
6 suggest we talk in the back about this.

7 MEMBER ALBERTI: Okay.

8 MEMBER JONES: I vehemently
9 disagree with your premise, although I
10 appreciate your position.

11 MEMBER RODRIGUEZ: Is this
12 testimony going to be hearsay or no?

13 CHAIRPERSON MILLER: Well, I mean,
14 I -- do you want to go back? I would say that
15 I would agree with you, Mr. Alberti.

16 MEMBER ALBERTI: All right. Let's
17 go back.

18 CHAIRPERSON MILLER: Okay.

19 MEMBER ALBERTI: Let's go talk.

20 CHAIRPERSON MILLER: All right.

21 So you probably need a break anyway, right?

22 So hopefully we are almost done. We are going

1 to take a vote to going back.

2 MEMBER RODRIGUEZ: Oh, we have to
3 make a motion?

4 CHAIRPERSON MILLER: Yes. We've
5 got to do this again.

6 MEMBER RODRIGUEZ: A motion.

7 CHAIRPERSON MILLER: Okay. As
8 Chairperson of the Alcoholic Beverage Control
9 Board for the District of Columbia and in
10 accordance with Section 405 of the Open
11 Meetings Amendment Act of 2010, I move that
12 the ABC Board hold a closed meeting for the
13 purpose of seeking legal advice from our
14 counsel on Case No. 14-PRO-00009, Amsterdam
15 Falafelshop, per Section 405(b)(4) of the Open
16 Meetings Amendment Act of 2010, and
17 deliberating upon this case for the reasons
18 cited in Section 405(b)(13) of the Open
19 Meetings Amendment Act of 2010.

20 Is there a second?

21 MEMBER RODRIGUEZ: Second it.

22 CHAIRPERSON MILLER: Mr. Rodriguez

1 seconded the motion. I'll now take a roll
2 call vote on the motion now that it has been
3 seconded.

4 Mr. Brooks?

5 MEMBER BROOKS: I agree.

6 CHAIRPERSON MILLER: Mr.

7 Rodriguez?

8 MEMBER RODRIGUEZ: I agree.

9 CHAIRPERSON MILLER: Ms. Miller
10 agrees.

11 Mr. Alberti?

12 MEMBER ALBERTI: I agree.

13 CHAIRPERSON MILLER: Mr. Short?

14 MEMBER SHORT: I agree.

15 CHAIRPERSON MILLER: Mr. Jones?

16 MEMBER JONES: I agree.

17 CHAIRPERSON MILLER: Okay. The
18 vote is then 6-0-0. And we will now recess to
19 the boardroom and consider this issue in
20 closed session.

21 (Whereupon, at 7:34 p.m. a recess
22 until 7:42 p.m.)

1 CHAIRPERSON MILLER: Okay. We are
2 back on the record. I don't think there is a
3 motion before us. I think there is just an
4 issue about whether Mr. Ferris will be allowed
5 to testify. So the consensus, I guess, is
6 that we will allow you to testify, but,
7 please, take note for next time, so there
8 won't be these misunderstandings.

9 And I just want to say that, you
10 know, you can testify, but this is not a
11 popularity contest, you know, how many people
12 support this restaurant. It's about whether
13 there is real risks to, you know, peace, order
14 and quiet. Okay. All right. So are you
15 going to take the witness stand?

16 MR. FERRIS: Sure.

17 Whereupon,

18 ELWYN FERRIS
19 was called as a witness by Counsel for the
20 Protestant, and having been first duly sworn,
21 assumed the witness stand and was examined and
22 testified as follows:

1 CHAIRPERSON MILLER: Okay. Thank
2 you.

3 DIRECT EXAMINATION

4 MS. STERLING: Mr. Ferris, can you
5 tell us what you know about the management of
6 trash in the neighborhood?

7 MEMBER ALBERTI: Did Mr. Ferris
8 introduce himself?

9 MR. FERRIS: My name is Elwyn
10 Ferris. I am also -- I am a resident of the--
11 of 1417 T Street for about 30-odd years.

12 Having lived there as long as I
13 have, I am very familiar with how the
14 restaurants in the neighborhood manage their
15 trash and they work very cooperatively. I
16 don't know of anyone who hasn't worked
17 cooperatively with the community to do
18 whatever we can to manage trash, so that we
19 don't have -- so that we can resolve the
20 rodent infestation problems that we have got.

21 I don't believe there is an
22 establishment in that immediate area who

1 either doesn't voluntarily keep their trash
2 indoors until the day of trash collection or
3 they have a written provision in their
4 settlement agreement that requires them to do
5 so.

6 This would be the only
7 establishment that would have receptacles and
8 a grease container on the public space and
9 that's what we are seeking to avoid. That's
10 what we want relief from.

11 It is my understanding having met
12 with DPW, Investigator Sonia Chance, on around
13 the 23rd or 24th, that they are indeed on
14 public space and that it is illegal. When I
15 met with her, she asked me -- I called DPW to
16 get an assessment. She asked me if I wanted
17 to have the business cited? I said no, we are
18 in the midst of negotiations. It's a new
19 business. We don't want to get off on the
20 wrong foot. I just need a reading from you as
21 to what your assessment is.

22 He can't have them there. It's a

1 violation. She said I will warn him. She
2 said are you sure you don't want me to write
3 him a citation? I said no citations. She
4 said I'll warn him and if they are here
5 tomorrow, I will come back and write him a
6 citation. Apparently, that did not happen.

7 But it was very clear to me that
8 that was on public space. And nobody else in
9 the neighborhood has it and there has never
10 been trash barrels or grease in that alley.
11 We worked years ago to have it cleaned up.

12 MS. STERLING: Thank you. Mr.
13 Ferris, did you collect letters of concern
14 from the immediately impacted residents,
15 including the abutting resident on the other
16 side of the alley?

17 MR. FERRIS: Yes. I brought my
18 car over to Douglas Auto Repairs because my
19 brake lining went out and he said to me what
20 can you do to help me with these trash
21 receptacles, because everybody thinks they are
22 mine and they are not.

1 So I said well, I am aware of
2 whose they are and I will try to get the
3 neighbors behind getting them moved. So I
4 contacted my neighbors. We have a very tight-
5 knit community. We all work very closely and
6 whenever it was mentioned, whenever I was in
7 conversation with somebody, what are those
8 things doing back there?

9 So we -- I received about 20-odd
10 letters from my neighbors objecting to those
11 being there and wanting the trash and grease
12 put inside the establishment. And the
13 neighbor who lives directly across from the
14 establishment has had major problems with
15 those barrels being there and he wrote me a
16 letter asking -- you know, supporting our
17 efforts to get them removed.

18 MS. STERLING: And so these are
19 Exhibit 6, 7 and 8, the letters from the
20 adjoining property.

21 MR. FERRIS: Immediate neighbor.

22 MS. STERLING: A letter from the

1 adjoining residences and a letter from the ANC
2 Commissioner that negotiated the SA, the
3 previous SAs?

4 MR. FERRIS: They can't get their
5 cars around the -- they say two vehicles can
6 no longer fit in the alley. They can't make
7 the turns.

8 MS. STERLING: True.

9 MR. FERRIS: They have noticed an
10 increase in rodent infestation. It's all in
11 there. It's all in their letters.

12 MS. STERLING: All right. So
13 these are Exhibits 6, 7 and 8.

14 CHAIRPERSON MILLER: I'm missing 6
15 and 8. Do you have that, 6 and 8?

16 MR. FERRIS: 6 and 8?

17 MS. STERLING: 6, 7 and 8.

18 CHAIRPERSON MILLER: I have 7 and
19 9. Oh, okay.

20 MEMBER SHORT: I have 8.

21 CHAIRPERSON MILLER: Okay. Oh,
22 you have 8? Okay.

1 MR. FERRIS: There is also a
2 letter in there from the former --

3 CHAIRPERSON MILLER: How about 6?

4 MEMBER ALBERTI: Mr. Ferris?

5 MR. FERRIS: Am I done? Okay.

6 Yes?

7 MEMBER JONES: Hold on a second.

8 CHAIRPERSON MILLER: Do you have
9 6?

10 MEMBER ALBERTI: I don't have 6.

11 CHAIRPERSON MILLER: Do you have a
12 complete set of these, Mr. O'Brien?

13 MR. O'BRIEN: I don't have any of
14 them.

15 CHAIRPERSON MILLER: You don't?
16 We all should have these if you are going to
17 refer to them.

18 MR. FERRIS: Any of these?

19 CHAIRPERSON MILLER: That's 5. Is
20 there 6? Here is 6, okay. So thank you.
21 This is 6.

22 MR. O'BRIEN: I've got a 7 and a 9

1 now.

2 CHAIRPERSON MILLER: Okay.

3 MR. O'BRIEN: Oh, 6, 7 and 8.

4 MS. STERLING: 6, 7 and 8.

5 MR. O'BRIEN: Yeah, I have an 8
6 from earlier.

7 CHAIRPERSON MILLER: Oh, this is
8 plaintiff's.

9 MR. FERRIS: Yes.

10 MR. O'BRIEN: I don't have a 6.

11 CHAIRPERSON MILLER: I don't have
12 a 6.

13 MEMBER RODRIGUEZ: No, that's his.

14 CHAIRPERSON MILLER: What is it?

15 MR. O'BRIEN: I have 7. I don't
16 have 6.

17 MS. STERLING: 6 is the big file.

18 CHAIRPERSON MILLER: Oh, 6 is the
19 big -- with the handbook? No? Okay. No,
20 none of theirs have been admitted yet.

21 MEMBER JONES: Oh, okay, well, if
22 they haven't been admitted, why are we trying

1 to review?

2 CHAIRPERSON MILLER: Yeah, I don't
3 know. I don't think you do. I don't think
4 you do. You have it. No, this is Applicant's
5 6. This was admitted, that's why you have it.

6 MEMBER ALBERTI: Ms. Sterling, do
7 you have a copy of No. 6?

8 MS. STERLING: They were all in
9 the file.

10 MEMBER ALBERTI: Nobody does.
11 Does it exist?

12 MS. STERLING: They were all part
13 of the exhibit.

14 MEMBER JONES: This says Exhibit
15 6.

16 CHAIRPERSON MILLER: Is this it?
17 Is this what you mean?

18 MS. STERLING: No, no.

19 CHAIRPERSON MILLER: Okay.

20 MS. STERLING: 6 is all the
21 letters from the residents.

22 MEMBER ALBERTI: Well, we can't

1 very well admit it if we don't have it, if no
2 one has it.

3 CHAIRPERSON MILLER: Right.

4 MEMBER ALBERTI: No one in the
5 room seems to have it.

6 MS. STERLING: It's huge.

7 CHAIRPERSON MILLER: Okay.

8 MEMBER ALBERTI: Madam Chair, I
9 think we should move on.

10 CHAIRPERSON MILLER: Okay.

11 MEMBER ALBERTI: I mean, no one in
12 the room seems to have Exhibit 6. And I think
13 that it's not the Board's job to find it.

14 CHAIRPERSON MILLER: Well, the
15 protestant doesn't have it?

16 MS. STERLING: So let --

17 MEMBER ALBERTI: Yes.

18 MS. STERLING: Yes, they were
19 turned in to --

20 CHAIRPERSON MILLER: You don't
21 have -- you didn't keep a copy for yourself?

22 MEMBER RODRIGUEZ: What was it?

1 MS. STERLING: No. It's the --

2 MEMBER RODRIGUEZ: Madam Chair,
3 what was it?

4 MS. STERLING: Exhibit 6 is
5 multiple letters from the affected residents.

6 MEMBER ALBERTI: Well, you
7 shouldn't have a copy of it. It hasn't been
8 admitted.

9 CHAIRPERSON MILLER: Yeah, you
10 probably don't have a copy.

11 MR. O'BRIEN: I have copies.

12 MS. STERLING: So until we can
13 find it, can we address 7 and 8?

14 CHAIRPERSON MILLER: Yes, I have
15 7. All right. All right.

16 MS. STERLING: Do you have 8?

17 CHAIRPERSON MILLER: Yes, I have
18 8. Here is an 8. There is an extra 8.

19 MEMBER RODRIGUEZ: Can I see it?

20 CHAIRPERSON MILLER: And 9 we
21 have.

22 MS. STERLING: Can we address 7

1 and 8?

2 CHAIRPERSON MILLER: You can. I
3 just didn't want to just ignore this if we
4 could find it, but -- all right.

5 MEMBER RODRIGUEZ: Does she have
6 it? Does she have it?

7 CHAIRPERSON MILLER: No. You
8 didn't keep a copy?

9 MS. STERLING: No.

10 CHAIRPERSON MILLER: Do you have a
11 copy?

12 MS. STERLING: No, we gave all the
13 packets to the other person who was --

14 CHAIRPERSON MILLER: Who left.

15 MS. STERLING: -- there.

16 CHAIRPERSON MILLER: Mr. O'Brien,
17 you don't have it either, huh?

18 MR. O'BRIEN: I don't have 6. I
19 have a copy of 7 and a copy of 8.

20 CHAIRPERSON MILLER: Okay.

21 MR. O'BRIEN: And I received those
22 from Board staff.

1 CHAIRPERSON MILLER: Okay. All
2 right.

3 MR. FERRIS: Here is our copy.

4 CHAIRPERSON MILLER: That's why --

5 MR. FERRIS: This is our original
6 copy.

7 MS. STERLING: This is the
8 original?

9 MR. FERRIS: Yes.

10 CHAIRPERSON MILLER: I think our
11 policy has been that you serve exhibits ahead
12 of time, as well, so we wouldn't have this
13 kind of problem. Okay. Do you have it?

14 MR. O'BRIEN: I have been handed
15 now what is exhibit -- is marked 6. 6 and
16 then 6A.

17 CHAIRPERSON MILLER: Okay.

18 MR. O'BRIEN: Through 6X.
19 Obviously, I have not had an opportunity to
20 read them.

21 CHAIRPERSON MILLER: Right.

22 MR. O'BRIEN: But I will accept

1 that they are letters that Mr. Ferris has
2 collected from neighborhood residents,
3 especially since an awful lot of them are
4 identical with just different names at the
5 bottom.

6 MEMBER RODRIGUEZ: I think I
7 remember seeing that.

8 MR. O'BRIEN: So I have now seen
9 that. I understand what it is without having
10 read every syllable.

11 CHAIRPERSON MILLER: Okay.

12 MR. O'BRIEN: I appear to have the
13 only --

14 CHAIRPERSON MILLER: You do.

15 MR. O'BRIEN: -- living copy here
16 in my hand.

17 CHAIRPERSON MILLER: Okay. I
18 mean, I certainly want to look at it if it is
19 moved to go into evidence.

20 MR. O'BRIEN: Well, I will have
21 objection --

22 CHAIRPERSON MILLER: But it isn't

1 yet.

2 MR. O'BRIEN: -- when the -- when
3 counsel seeks, I'm sorry, Ms. Sterling seeks
4 to move it.

5 MS. STERLING: Is that a
6 promotion?

7 MR. O'BRIEN: That's a compliment.
8 But I believe there has got to be a foundation
9 for these things. You just can't pour down
10 documents on the Bench.

11 CHAIRPERSON MILLER: Right. I
12 understand that, right.

13 MR. O'BRIEN: Right? There has
14 got to be -- that's why I asked Mr. Cherry,
15 for instance, who took these photographs. I
16 did. And did they accurately depict as a
17 foundation for it being evidence. But thus
18 far, we haven't -- you know, maybe there will
19 be a foundation.

20 CHAIRPERSON MILLER: Right.

21 MR. O'BRIEN: But we haven't heard
22 it yet.

1 CHAIRPERSON MILLER: Right.

2 MEMBER ALBERTI: Thank you, Mr.
3 O'Brien.

4 CHAIRPERSON MILLER: Right.

5 MEMBER ALBERTI: Some of us aren't
6 lawyers and we don't really understand all of
7 that, but some of us are and I'm sure they
8 understand that.

9 MS. STERLING: He asked you if you
10 collected letters.

11 CHAIRPERSON MILLER: I'm sorry.

12 MR. FERRIS: I'm happy to supply a
13 foundation. I don't know how to do that.

14 CHAIRPERSON MILLER: Okay.

15 MS. STERLING: We asked if he
16 collected letters of concern regarding these
17 issues from the residents and the directly
18 impacted neighbor who is right on the other
19 side of the alley.

20 CHAIRPERSON MILLER: Okay.

21 MS. STERLING: And so that's what
22 these are.

1 CHAIRPERSON MILLER: Wait. Did he
2 say that's what these are?

3 MS. STERLING: That's what these
4 are.

5 MR. FERRIS: I believe I stated
6 that in my testimony just now. I collected a
7 selection of letters. It was a boilerplate
8 letter that was developed that a number of
9 neighbors read and signed. Some of them
10 wanted to supply their own version of that
11 letter, which they made alterations to it, but
12 generally, they are all seeking the same
13 thing, removal of the trash and grease bins
14 from the alley.

15 But I am responsible for -- I
16 mean, I'm the one who did it all.

17 CHAIRPERSON MILLER: You're the
18 one who what?

19 MR. FERRIS: I collected them.

20 CHAIRPERSON MILLER: Okay.

21 MR. FERRIS: Yes.

22 CHAIRPERSON MILLER: I mean, I

1 know exactly, I'll ask, but it's kind of --
2 where are we? It's not my turn yet, I guess.

3 MR. O'BRIEN: I believe we are
4 about to hear a request to move No. 6 into
5 evidence.

6 CHAIRPERSON MILLER: Oh, were you
7 finished with --

8 MS. STERLING: With No. 6, No. 7
9 and No. 8, they are all related to the
10 collection of the concerns.

11 CHAIRPERSON MILLER: Okay. Then
12 if we are -- are you moving the -- let's take
13 them one at a time. Are you moving No. 6 into
14 evidence?

15 MS. STERLING: Yes.

16 CHAIRPERSON MILLER: Okay. Then I
17 would have to ask the question, are all these
18 letters that are attached, did you write the
19 letters?

20 MR. FERRIS: I produced a
21 boilerplate letter and some of them I emailed
22 to my neighbors who printed them and signed

1 them and left them at my house. Others gave
2 them to me on the street. I went door-to-
3 door. Some of them took the letter, wanting
4 to read it and then dropped it at my door.
5 Others dropped various versions of it. They
6 came to me and said I took -- I changed it a
7 little bit and, you know.

8 CHAIRPERSON MILLER: Okay. So you
9 solicited --

10 MR. FERRIS: Yes.

11 CHAIRPERSON MILLER: -- their
12 signatures?

13 MR. FERRIS: Yes.

14 CHAIRPERSON MILLER: Okay. And
15 did you tell them what these letters were for?

16 MR. FERRIS: Yes, I did.

17 CHAIRPERSON MILLER: What did --

18 MR. FERRIS: I told them about --
19 all about the hearing today and that this was
20 our opportunity. There is general alarm in
21 the community about them and they were
22 thrilled to know that there was some kind of

1 an apparatus by which we could hopefully get
2 them removed.

3 CHAIRPERSON MILLER: Did you tell
4 them --

5 MEMBER ALBERTI: Madam Chair,
6 isn't this Mr. O'Brien's job to be asking
7 these questions on cross-examination?

8 CHAIRPERSON MILLER: Well, I don't
9 know. She has moved them. He has moved to
10 put them in evidence.

11 MEMBER ALBERTI: Well, but, you
12 know, I haven't even heard his objection.

13 CHAIRPERSON MILLER: Well, I --

14 MEMBER ALBERTI: I mean, I think
15 we ought to keep things in order here where we
16 go --

17 CHAIRPERSON MILLER: It's not --

18 MEMBER ALBERTI: -- well, he
19 objects. He tells us why he objects.

20 CHAIRPERSON MILLER: Well, that's
21 true, but that's not necessarily --

22 MEMBER ALBERTI: I mean,

1 basically --

2 CHAIRPERSON MILLER: -- true about
3 this.

4 MEMBER ALBERTI: -- I think you
5 are doing Mr. O'Brien's job, which he is
6 probably thankful for.

7 CHAIRPERSON MILLER: Mr. O'Brien,
8 do you have an objection to my questions?

9 MR. O'BRIEN: I have three. No.
10 To your questions?

11 CHAIRPERSON MILLER: Yeah.

12 MR. O'BRIEN: I don't think it's
13 my place to object to what the Board does or
14 doesn't do.

15 CHAIRPERSON MILLER: Good answer.
16 Well, Mr. Alberti has made me lose my train of
17 thought, so I'll pick up after you then, since
18 he thinks you should go first.

19 MR. O'BRIEN: Well, I have three
20 objections to the admission of these letters.
21 And we are talking about No. 6 now, are we
22 not?

1 CHAIRPERSON MILLER: Yes.

2 MR. O'BRIEN: Okay. May I
3 approach to look at the only copy --

4 CHAIRPERSON MILLER: Oh, I'm
5 sorry.

6 MR. O'BRIEN: -- of No. 6?

7 CHAIRPERSON MILLER: Yeah, okay.

8 MR. O'BRIEN: Objection No. 1 is
9 these are statements of opposition from
10 individuals. These were all due by the
11 protest deadline, which was months ago.

12 CHAIRPERSON MILLER: Okay. That--

13 MR. O'BRIEN: Petitions in
14 opposition to a license are due by the protest
15 deadline, the 45 day period in which people
16 can object. These are far too late to be
17 received by the Board as objections, that's
18 why we have a fixed 45-day window. If you
19 have got a problem, speak up. If not, you
20 have lost your opportunity.

21 My second objection is that I
22 can't cross-examine a single one of these. I

1 can't ask any of these people why they feel a
2 certain way.

3 My third objection is they are all
4 dated April 5th, four days ago. Long after
5 the Protest Information Form was due. These
6 have been generated in the last week. And
7 before Mr. Silverstein left the dias, I think
8 he made a good distinction. It's one thing to
9 say we are going to receive evidence that is--
10 that was not listed on the Protest Information
11 Form, but, as Mr. Silverstein said, it's quite
12 something else to say we are going to receive
13 that evidence that was created after the
14 Protest Information Form deadline.

15 So for those three different
16 reasons, I object. And I will tell you that
17 when we get to it, I'll have the same
18 objection to No. 7, which is a letter dated
19 April 7, two days ago, or to No. 8, which is
20 an email dated April 8th, yesterday. I'll now
21 return No. 6 to the Chair.

22 CHAIRPERSON MILLER: Thank you.

1 Okay. Does somebody else have questions
2 before I ask my last question?

3 Did you ask any of these
4 individuals if they wanted to testify?

5 MR. FERRIS: Oh, yeah.

6 CHAIRPERSON MILLER: And?

7 MR. FERRIS: And many of them
8 wanted to, but just could not work it in their
9 schedule.

10 CHAIRPERSON MILLER: Okay. Do
11 Board Members have any comments they want to
12 give? I can pass this down. What?

13 First, you know, we usually lean
14 towards taking everything in and "giving it
15 the weight it deserves." I tend to think
16 though, personally, in this case and I'll
17 probably get out-voted, which is okay, that
18 this looks like they were generated and it's
19 not the same thing as just hearsay or, you
20 know, people's comments.

21 It's boilerplate that was passed
22 around and I think there is no chance to

1 cross-examine. This one bothers me, but I'll
2 hear from others. I mean, if I'm -- I know
3 that the tendency of this Board is to let it
4 all in and give it whatever weight. So but I
5 haven't really seen --

6 MEMBER SHORT: Madam Chair?

7 CHAIRPERSON MILLER: -- where the
8 letters are all the same or mostly and --

9 MEMBER SHORT: Madam Chair?

10 CHAIRPERSON MILLER: Yeah?

11 MEMBER SHORT: Madam Chair?

12 CHAIRPERSON MILLER: Yes? Yes,
13 Mr. Short?

14 MEMBER SHORT: I know that I'm a
15 new Board Member and I do know I don't know
16 all the procedures as of yet, but
17 procedurally-wise this appears to be really
18 well-aligned. It appears --

19 CHAIRPERSON MILLER: I don't think
20 so.

21 MEMBER SHORT: -- that if they had
22 time to do the -- during the protest period,

1 produce these letters and produce this
2 information and witnesses, and they didn't,
3 but then we have letters from two days ago
4 with --

5 CHAIRPERSON MILLER: Great.

6 MEMBER SHORT: -- nothing to back
7 them up, I just -- raises a question with me.

8 CHAIRPERSON MILLER: Let me just
9 pass this down, so you all can see that --

10 MEMBER ALBERTI: It hasn't been
11 admitted.

12 CHAIRPERSON MILLER: Okay. So,
13 basically, the letters are almost all the same
14 as Mr. Ferris admitted. And it was shown to
15 them and they signed it. So it is kind of
16 like a petition, I suppose.

17 MEMBER ALBERTI: Yeah.

18 CHAIRPERSON MILLER: Okay.

19 MEMBER ALBERTI: And I would take
20 that into account, if I were to use it.

21 CHAIRPERSON MILLER: Okay. Okay.

22 MEMBER ALBERTI: I would give it

1 the weight that it deserves.

2 CHAIRPERSON MILLER: Okay. We
3 don't need to spend much time on it. I think
4 it may be the consensus of the Board to keep it
5 in, is that what I'm hearing, and give it the
6 weight that it deserves?

7 MEMBER ALBERTI: It's your
8 decision.

9 CHAIRPERSON MILLER: My decision?
10 Okay. All right. So we will take it in and
11 treat it like a petition as opposed to
12 individual letters. And it will be given the
13 weight that it deserves. And we say that
14 meaning we recognize it as boilerplate and it
15 was solicited and Mr. O'Brien doesn't have a
16 chance to cross-examine.

17 Okay. So that's -- and I hear
18 your objections, Mr. O'Brien. I think they
19 are very good objections. I basically agree
20 with you and I'll say this, there is not that
21 much difference between giving it the weight
22 it deserves, but it is in the record then with

1 a little difference. Okay. So that is
2 admitted, Protestant's Exhibit No. 6.

3 (Whereupon, the document was
4 marked for identification as
5 Protestant Exhibit 6 and was
6 received in evidence.)

7 MS. STERLING: And we would like
8 to admit No. 7, a letter from the former
9 Commissioner of 2B, who negotiated the SAs
10 regarding the trash provisions in the
11 neighborhood.

12 CHAIRPERSON MILLER: Okay. Let me
13 find that. Okay. The letter from Mr.
14 Estrada.

15 MS. STERLING: Correct.

16 CHAIRPERSON MILLER: Okay.
17 Objections, Mr. O'Brien?

18 MR. O'BRIEN: The same three
19 objections.

20 CHAIRPERSON MILLER: Well,
21 certainly the objection he is not here to be
22 cross-examined.

1 MR. O'BRIEN: And --

2 CHAIRPERSON MILLER: And?

3 MR. O'BRIEN: -- that it is past
4 the protest deadline, which was many months
5 ago. And it was created in the last two days,
6 well after the Protest Information Form was
7 due.

8 CHAIRPERSON MILLER: Okay.

9 MR. O'BRIEN: It was supposed to
10 list the exhibits.

11 CHAIRPERSON MILLER: Okay. I am
12 going to admit Exhibit No. 7.

13 (Whereupon, the document was
14 marked for identification as
15 Protestant Exhibit 7 and was
16 received in evidence.)

17 CHAIRPERSON MILLER: Okay.

18 MR. FERRIS: May I address that?

19 CHAIRPERSON MILLER: What?

20 MR. FERRIS: May I address that?

21 MEMBER ALBERTI: No.

22 MS. STERLING: Protest deadline.

1 MR. FERRIS: These are not protest
2 letters.

3 CHAIRPERSON MILLER: I understand
4 that.

5 MR. FERRIS: Okay.

6 CHAIRPERSON MILLER: I understand
7 that. I don't think it's a protest letter
8 either. Okay. But I do recognize you don't
9 have a chance to cross-examine, so we are
10 going to give it that weight, keeping that in
11 mind. Okay.

12 MS. STERLING: And I would like to
13 enter Exhibit 8, which is the letter from the
14 resident who lives directly on the other side
15 of the alley there that you saw in the picture
16 from the Investigator.

17 CHAIRPERSON MILLER: Okay. 8 or
18 what's 8? 8A?

19 MS. STERLING: 8.

20 CHAIRPERSON MILLER: Just 8.
21 Alexander?

22 MS. STERLING: Yes.

1 CHAIRPERSON MILLER: Oh, Alexander
2 Rales, okay. All right. Same objection?

3 MR. O'BRIEN: Same three
4 objections.

5 CHAIRPERSON MILLER: Okay. Same
6 thing. We will admit it and give it the
7 weight that it deserves.

8 (Whereupon, the document was
9 marked for identification as
10 Protestant Exhibit 8 and was
11 received in evidence.)

12 CHAIRPERSON MILLER: Okay.

13 MEMBER RODRIGUEZ: Madam Chair,
14 may I make an observation here?

15 CHAIRPERSON MILLER: Sure.

16 MEMBER RODRIGUEZ: Madam Chair,
17 there seems to be a lot of letters of protest
18 and I don't see why some of these individuals
19 are not here in person to do these protests.
20 And I just am alarmed at there are so many
21 protests, but no individuals to be here to be
22 cross-examined, to be questioned by the Board.

1 I just don't understand why that has taken
2 place.

3 That's just a statement that I'm
4 making for the record.

5 CHAIRPERSON MILLER: Okay. Okay.
6 Well, they would be given more weight if they
7 were here, but not everybody can be here,
8 okay, or whatever. Yes? Oh, none of us have
9 cross. I can't remember where we are now.

10 MR. O'BRIEN: We are still in
11 direct examination.

12 MS. STERLING: Cross.

13 CHAIRPERSON MILLER: You're
14 finished?

15 MS. STERLING: We're finished now.

16 CHAIRPERSON MILLER: And you went
17 to your documents, right, that's what you
18 said.

19 MS. STERLING: Now, we're done.

20 CROSS-EXAMINATION

21 MR. O'BRIEN: Mr. Ferris, in
22 response to Mr. Rodriguez' question, people,

1 as you say the community, feels so strongly
2 about this, why aren't any of them here?

3 MR. FERRIS: I think you must know
4 how difficult it is for people to take time
5 out of their very busy lives to come to
6 hearing. We have been here -- how many hours
7 have we been here? This is the -- this has
8 been a problem with the process for as many
9 years as I have been doing this.

10 It is extremely difficult to ask
11 people to take time out of their daily lives.
12 And one of the reasons that this organization
13 was founded, was so that that could be the
14 vehicle by which we could engage in these
15 proceedings.

16 MR. O'BRIEN: None of these
17 people, I think there was 25, 26, 27, could
18 make it the block and a half from where they
19 live to this hearing room today?

20 MR. FERRIS: The gentleman who
21 lives directly across the street, who is
22 unbelievably imposed upon by those barrels,

1 works for the Washington Wizards. He has been
2 in constant communication with me trying to
3 find a way that he didn't have to go to
4 tonight's game. He couldn't get out of it.

5 He even sent me an email just
6 before I left here, "Elwyn, please, read my
7 letter into the record." I can't do that.
8 But people have a lot of responsibilities.
9 They can't take the time and they depend on
10 other members of the community to do it on
11 their behalf and that's what we have been
12 doing.

13 MR. O'BRIEN: Do it on their
14 behalf or do it in their name?

15 MR. FERRIS: I don't know the
16 difference.

17 MR. O'BRIEN: You said that the
18 reason your organization was created was what?

19 MR. FERRIS: One of the reasons
20 that we would have a vehicle whereby when
21 issues like this came up, we have an
22 organization that could handle it.

1 MR. O'BRIEN: Do you know that it
2 takes five individuals to protest an ABC
3 license application. Do you not?

4 MR. FERRIS: Yes.

5 MR. O'BRIEN: And you know that
6 even if five individuals protest it, if the
7 ANC supports the application, the protest
8 against the five individuals is knocked out.
9 You know that, too, don't you?

10 MR. FERRIS: Yes.

11 MR. O'BRIEN: Okay. So isn't the
12 way around that just to form an organization?
13 Isn't that why this was -- the Shaw-Dupont
14 Citizens Alliance was formed as a way around
15 the inability of a handful of people to stop
16 ABC license applications?

17 MR. FERRIS: No way. Absolutely
18 not.

19 MR. O'BRIEN: Okay. And you heard
20 Mr. Cherry's testimony, did you not that when
21 he went to this meeting of the Shaw Dupont
22 Neighborhood Alliance, there were a total of

1 four representatives or members of the
2 alliance there. You heard that testimony, did
3 you not?

4 MR. FERRIS: Okay. Yes, I did.

5 MR. O'BRIEN: And that was
6 factually accurate, was it not?

7 MR. FERRIS: I wasn't at that
8 meeting. I couldn't attend that meeting.

9 MR. O'BRIEN: So you have -- we
10 have got this place -- you have no reason to
11 challenge Mr. Cherry's testimony, do you?

12 MR. FERRIS: I have no basis on
13 which to challenge it.

14 MR. O'BRIEN: Okay.

15 MR. FERRIS: No.

16 MR. O'BRIEN: All right. Well,
17 then the evidence of record is that a total of
18 four people have been driving this protest.

19 MR. FERRIS: Well, first of all, I
20 said that I wasn't there. So Mr. Cherry's
21 claims of that is something that I can't
22 validate either way.

1 MR. O'BRIEN: Fine. And as you
2 made clear or the protestants made clear, the
3 problem here is that Dane Cherry won't sign a
4 voluntary agreement, excuse me, a settlement
5 agreement. Is that not really the problem
6 here?

7 MR. FERRIS: I guess you could say
8 that is the problem, yeah.

9 MR. O'BRIEN: Okay. The problem
10 is, is it not, that Dane won't genuflect
11 before you, Ms. Sterling and the other two
12 people who are behind and constitute the
13 substance of this protest?

14 MR. FERRIS: I find that very out
15 of line.

16 MR. O'BRIEN: I don't care if you
17 find it out of line. Is it not true?

18 MR. FERRIS: No, it is not true.

19 MR. O'BRIEN: Nothing further.

20 MR. FERRIS: I think that is rude.

21 CHAIRPERSON MILLER: Board
22 questions? Yes, Mr. Alberti?

1 MEMBER ALBERTI: Yes. Mr. Ferris,
2 I'm trying to judge your level of concern. We
3 have been hearing all these concerns about
4 trash. I'm trying to judge your level of
5 concern. The reason I'm having problems is
6 because I've got these letters all being
7 generated last week.

8 So how long -- you have known
9 about this for quite a while, right?

10 MR. FERRIS: Well, when they
11 appeared there, sure.

12 MEMBER ALBERTI: Sure, okay. And
13 several weeks?

14 MR. FERRIS: (No audible answer.)

15 MEMBER ALBERTI: You have known
16 about this application several weeks?

17 MR. FERRIS: Oh, about the
18 application?

19 MEMBER ALBERTI: Yeah.

20 MR. FERRIS: Oh, yeah, we have
21 known about it --

22 MEMBER ALBERTI: All right.

1 MR. FERRIS: -- for quite some
2 time.

3 MEMBER ALBERTI: Okay. And when
4 did you talk to all of these people who wrote
5 these letters?

6 MR. FERRIS: In the last week or
7 so. The last two weeks. I don't --

8 MEMBER ALBERTI: So you were so
9 concerned that it took you that long to get it
10 together to talk to those people?

11 MR. FERRIS: No.

12 MEMBER ALBERTI: Didn't -- your
13 concern didn't generate some urgency to you?
14 Is that what I'm understanding?

15 MR. FERRIS: (No audible answer.)

16 MEMBER ALBERTI: Yes or no? It
17 didn't generate any urgency in you? Your
18 concern wasn't of the extent that it generated
19 an urgency of you to get out into the
20 community and talk to these people about how
21 they felt?

22 MR. FERRIS: I think there is kind

1 of a misunderstanding here. You mean about
2 the alcohol license application?

3 MEMBER ALBERTI: That's what we
4 are here for.

5 MR. FERRIS: Yeah. Well, you see,
6 the alcohol license application was months
7 ago. No problems presented themselves to us
8 until the -- there was no objection to the
9 alcohol license application.

10 MEMBER ALBERTI: All right.

11 MR. FERRIS: What we wanted to do
12 was have the opportunity to negotiate an
13 agreement, so that we would have an
14 understanding. We only felt the need for that
15 upon appearance of the trash and grease in the
16 alley, which was long after the protest.

17 MEMBER ALBERTI: So when did you
18 discover it? When did you discover how the
19 trash would be handled?

20 MR. FERRIS: I would say probably
21 in the vicinity of March 20th or so, because I
22 think my call to DPW went in on something like

1 March 23rd, something like that.

2 MEMBER ALBERTI: So you called
3 them when? How long before -- how long before
4 you called them did you see -- did you have
5 concerns about trash management?

6 MR. FERRIS: Only within a couple
7 of days of having seen it there.

8 MEMBER ALBERTI: When did the
9 community first speak with the licensee?

10 MR. FERRIS: (No audible answer.)

11 MEMBER ALBERTI: When did your
12 organization first speak with the licensee?

13 MR. FERRIS: Well, I -- we
14 followed the ABRA procedure to send notice to
15 an applicant to come to our monthly meeting.

16 MEMBER ALBERTI: Okay.

17 MR. FERRIS: We followed the ABRA
18 procedure.

19 MEMBER ALBERTI: And when was that
20 monthly? Did he come to your monthly meeting?

21 MR. FERRIS: Yes, yes.

22 MEMBER ALBERTI: And when was

1 that?

2 MR. O'BRIEN: He can't testify.

3 MEMBER RODRIGUEZ: He is
4 testifying.

5 MR. O'BRIEN: If it's helpful, it
6 was January 16th.

7 MS. STERLING: January.

8 CHAIRPERSON MILLER: Okay.

9 MS. STERLING: January.

10 CHAIRPERSON MILLER: We have a lot
11 of coaching about that.

12 MEMBER ALBERTI: Okay. Yeah,
13 we've got a lot of coaching. Do you remember,
14 was it in January?

15 MR. FERRIS: (No audible answer.)

16 MEMBER ALBERTI: Your monthly
17 meeting when they appeared, was it in January?

18 MR. FERRIS: I wasn't at the
19 meeting.

20 MEMBER ALBERTI: I know.

21 MR. FERRIS: But I -- do you
22 mean --

1 MS. STERLING: January 16th.

2 MEMBER ALBERTI: Well, wait, wait,
3 wait. Mr. Ferris, so you're not concerned
4 enough to know.

5 MR. FERRIS: No, that's not true.

6 MEMBER ALBERTI: All right.

7 MR. FERRIS: We thought -- we are
8 concerned enough to follow the procedures. We
9 followed the procedures.

10 MEMBER ALBERTI: So I think that
11 you said it was January 6. I think Ms.
12 Sterling --

13 MS. STERLING: 16th.

14 MEMBER ALBERTI: For the record,
15 Ms. Sterling has stated and we will take that
16 as a stipulation that it was January 16th that
17 he met with them. And no one thought to ask
18 him how the trash would be managed?

19 MR. FERRIS: I wasn't at the
20 meeting. Our ANC didn't think to ask him. I
21 wasn't at the meeting.

22 MEMBER ALBERTI: Did you

1 communicate with people --

2 MR. FERRIS: I don't necessarily--

3 MEMBER ALBERTI: -- at the
4 meeting?

5 MR. FERRIS: -- feel that --

6 MEMBER ALBERTI: Did you
7 communicate with the people at the meeting?

8 MR. FERRIS: (No audible answer.)

9 MEMBER ALBERTI: Did you
10 communicate with the people at the meeting?

11 MR. FERRIS: I mean, I had
12 conversations with my other board members.

13 MEMBER ALBERTI: Did you ask them
14 what questions they asked him?

15 MR. FERRIS: Yeah, I said how did
16 it go? And they said that he was adamant
17 about not believing in settlement agreements
18 and he wasn't going to engage in any
19 negotiations.

20 MEMBER ALBERTI: But there were no
21 specifics -- but no one raised the issue of
22 trash back then?

1 MR. FERRIS: I can't speak to
2 that. I wasn't there.

3 MEMBER ALBERTI: I have no further
4 questions.

5 MEMBER SHORT: Madam Chair?

6 CHAIRPERSON MILLER: Yes, Mr.
7 Short?

8 MEMBER SHORT: Again, I would just
9 like to ask, you said you had a DPW Inspector
10 Chance come out?

11 MR. FERRIS: Yes.

12 MEMBER SHORT: And that person did
13 not perform their duty as a Government
14 employee? They refused to write a ticket?

15 MR. FERRIS: I can't say that she
16 refused.

17 MEMBER SHORT: But she didn't
18 write a ticket?

19 MR. FERRIS: She asked me if I
20 wanted her to and I said no, I didn't want to
21 get things off on the wrong foot. And then we
22 parted ways. So I don't know what she did

1 after that.

2 MEMBER SHORT: But didn't you also
3 testify that she said that if he didn't do
4 something in a couple of days, she would write
5 a ticket?

6 MR. FERRIS: Yes.

7 MEMBER SHORT: And she still never
8 wrote the ticket?

9 MR. FERRIS: I --

10 MEMBER SHORT: As far as you know?

11 MR. FERRIS: -- have no -- as far
12 as I know, no. I don't know how I would know,
13 but no. I don't think she did write a ticket.
14 If the testimony is that no tickets were
15 written, I wouldn't think she wrote a ticket.

16 MEMBER SHORT: You didn't follow-
17 up on that?

18 MR. FERRIS: I think we probably
19 will, yeah.

20 MEMBER SHORT: Thank you. Thank
21 you.

22 CHAIRPERSON MILLER: Others? Mr.

1 Ferris, where do you want them to put their
2 trash?

3 MR. FERRIS: Well, we believe that
4 all licensees should follow the same
5 regulations. Everybody else keeps it inside.
6 We would like it inside. The inside is
7 bigger. It's huge enough to hold the grease
8 and trash and we would like it inside.

9 CHAIRPERSON MILLER: Okay. And
10 did you tell Ms. Chance that? Is that her
11 name? This DPW person.

12 MR. FERRIS: That we wanted it
13 inside?

14 CHAIRPERSON MILLER: Yeah.

15 MR. FERRIS: No. I really called
16 her to just get a reading from her, could she
17 tell me was it on the public space.

18 CHAIRPERSON MILLER: Is it up to
19 them to -- is it their jurisdiction to
20 determine whether it should be inside?

21 MR. FERRIS: Oh, I don't believe
22 so.

1 CHAIRPERSON MILLER: It's your --
2 whose jurisdiction is it?

3 MR. FERRIS: Well, I don't -- I am
4 not with Public Space, so I don't know how
5 they enforce their regulations. So we are --
6 we just ask our businesses to cooperatively
7 work with us and put it inside. I don't
8 believe anybody is required to do that.

9 CHAIRPERSON MILLER: Oh, okay.

10 MR. FERRIS: Although I know that
11 Logan Circle now is requiring everybody to do
12 it.

13 CHAIRPERSON MILLER: Oh, okay.
14 When was the Shaw-Dupont Citizens organization
15 formed?

16 MR. FERRIS: 2012.

17 CHAIRPERSON MILLER: Okay.

18 MR. FERRIS: 2012.

19 CHAIRPERSON MILLER: And how many
20 people do you have in your organization?

21 MR. FERRIS: The number?

22 CHAIRPERSON MILLER: How many

1 members?

2 MR. FERRIS: I would say maybe 60
3 or so.

4 CHAIRPERSON MILLER: Okay. Okay.

5 MEMBER RODRIGUEZ: I've got one
6 more.

7 CHAIRPERSON MILLER: Okay. Mr.
8 Rodriguez?

9 MEMBER RODRIGUEZ: Yes, Mr.
10 Ferris, I made a statement to the Board that
11 I was concerned about the number of people
12 that have not come to be here. I consider
13 this a very important hearing. And we have
14 broken our backs to ensure that you had your
15 say. We have debated it and went out of our
16 way to make sure that your rights were
17 protected.

18 You just said that you have 60
19 members. 60 members in your organization.

20 MR. FERRIS: We have -- I would
21 say we have close to that. I don't keep the
22 membership records.

1 MEMBER RODRIGUEZ: Right. And so
2 of those 60 members, how many are present here
3 to testify on that issue?

4 MR. FERRIS: They become members,
5 so that they don't have to do this. So to
6 become members of the organization, we will do
7 it on their behalf.

8 MEMBER RODRIGUEZ: Oh, so in other
9 words, you get 60 members, so that you can
10 speak for them? Is that the way it works?

11 MR. FERRIS: We meet and we take a
12 vote.

13 MEMBER RODRIGUEZ: Well, I just
14 see a couple of people here speaking for 60
15 and I thought in America, you know, I don't
16 want to get too political, but, you know, a
17 representative democracy, if you have got an
18 organization, every organization that is -- is
19 your organization incorporated?

20 MR. FERRIS: Yes.

21 MEMBER RODRIGUEZ: Do you know
22 that an organization that is incorporated has

1 to exemplify the democratic process in terms
2 of its structure and in terms when you
3 incorporate, there is a certain identity that
4 has to be consistent with the American system,
5 with democracy and participation.

6 And so do you think that your
7 organization has a democratic process here in
8 terms of presenting its case between -- here
9 before this Board?

10 MR. FERRIS: We operate by our
11 corporation bylaws. We operate in accordance
12 to our bylaws.

13 MEMBER RODRIGUEZ: Okay. No more
14 questions. But I've got to tell you, I'm not
15 satisfied, for the record, that, you know, you
16 have done everything possible to get people
17 here to testify before this Board. That's all
18 I'll say for the record.

19 CHAIRPERSON MILLER: Others?

20 MR. FERRIS: It's always difficult
21 getting people to come to these.

22 CHAIRPERSON MILLER: I have just a

1 follow-up. Do you have a quorum under your
2 bylaws?

3 MR. FERRIS: Yes.

4 CHAIRPERSON MILLER: What's that?

5 MR. FERRIS: Oh, I couldn't tell
6 you.

7 MS. STERLING: It --

8 MR. FERRIS: I couldn't tell you
9 what it is.

10 MS. STERLING: Yes.

11 CHAIRPERSON MILLER: Okay. I
12 mean, I'm asking because Mr. O'Brien said
13 there were only four people at the meeting.

14 MS. STERLING: Yes. That wasn't
15 accurate. We have the sign-in sheets.

16 CHAIRPERSON MILLER: Wait. No.
17 Okay.

18 MR. FERRIS: Again, I wasn't
19 there.

20 CHAIRPERSON MILLER: Okay. That's
21 fine. All right. Any other Board questions?
22 Any questions on Board questions?

1 MR. O'BRIEN: Based on a Board
2 question?

3 CHAIRPERSON MILLER: Um-hum.

4 RECROSS-EXAMINATION

5 MR. O'BRIEN: Are you aware, Mr.
6 Ferris, that this application was originally
7 placarded on October 18, 2013 and that the
8 protest deadline, the petition date originally
9 was December 2, 2013?

10 MR. FERRIS: I can't attest to
11 those specific dates.

12 MR. O'BRIEN: But you are aware
13 that there was a previous round of placarding
14 in this case?

15 MR. FERRIS: Yes.

16 MR. O'BRIEN: Okay. Now, on or
17 about December 2nd, the 45th day, did you not
18 personally communicate with Fred Moosally, the
19 Director of the ABC Board, and complain that
20 a notice about this particular application had
21 not been sent to your group?

22 MR. FERRIS: I notified ABRA that

1 we had not received the notice that usually
2 comes from Ms. Fashbaugh. I knew -- know the
3 date, obviously, that I did that. I'm not
4 aware of the date, but when I found out that
5 a place had been placarded, that we haven't
6 been notified of, I contacted ABRA.

7 MR. O'BRIEN: And I suppose it is
8 just coincidence that you complained to ABRA
9 about that on the 45th day of the original
10 public notice period?

11 MR. FERRIS: Hmm.

12 MR. O'BRIEN: Is that just
13 coincidence?

14 MR. FERRIS: If it happened that
15 way, that would be purely coincidental,
16 because we do not intentionally -- there would
17 be no point in trying to do anything like that
18 intentionally. I won't acquiesce to the fact
19 that it was on the 45th day.

20 MR. O'BRIEN: All right. And did
21 you not demand of Director Moosally that it be
22 replacarded?

1 MR. FERRIS: I can't say that I
2 demanded of him. I informed him, obviously,
3 that we had not received notice. It has
4 happened a number of times.

5 MR. O'BRIEN: And you didn't
6 insist that the placarding start all over
7 again?

8 MR. FERRIS: Well, that wouldn't
9 be up to me to do it all over again. That's
10 an ABRA procedure.

11 MR. O'BRIEN: Did you --

12 MR. FERRIS: Not --

13 MR. O'BRIEN: -- suggest to
14 Director Moosally --

15 MR. FERRIS: No.

16 MR. O'BRIEN: -- that he --

17 MR. FERRIS: No.

18 MR. O'BRIEN: -- because you had
19 not received notice, that this should be
20 replacarded?

21 CHAIRPERSON MILLER: Is this
22 relevant, Mr. O'Brien?

1 MR. O'BRIEN: It goes to how long
2 Mr. Ferris has known about this application,
3 which was questions asked by Mr. Alberti.

4 CHAIRPERSON MILLER: Okay.

5 MR. O'BRIEN: He has known about
6 this at least since December 2nd of last year.

7 CHAIRPERSON MILLER: Um-hum.

8 MR. O'BRIEN: That was the
9 relevance of it.

10 CHAIRPERSON MILLER: Okay.

11 MR. O'BRIEN: Thank you.

12 MR. FERRIS: I don't know what
13 December 2nd of last year was, what date that
14 -- what relevance that date has.

15 MR. O'BRIEN: Well, I would ask
16 the Board to look at its own records and it's
17 notice of meeting, supplemental agenda from
18 December 11, 2013, review of Item No. 2,
19 "Review of registered civic association's
20 request to replacard an establishment."

21 MEMBER ALBERTI: We have it, Mr.
22 O'Brien.

1 MR. O'BRIEN: Thank you.

2 MEMBER ALBERTI: I remember.

3 MR. FERRIS: Well, that's a
4 procedural thing that if we feel that ABRA
5 hasn't followed the procedure that guides us--

6 MEMBER ALBERTI: I don't believe
7 there is a question. But, Mr. Ferris, I don't
8 believe there is a question out there.

9 MR. FERRIS: Okay.

10 MEMBER ALBERTI: I'm finished.
11 Thank you.

12 CHAIRPERSON MILLER: Okay. All
13 right. Thank you. Are there any other
14 questions? No. You are finished. We were at
15 you. Okay. And I don't think the Board is
16 going again. So thank you very much, Mr.
17 Ferris.

18 MR. FERRIS: Thank you.

19 MEMBER ALBERTI: Thank you.

20 (Whereupon, witness was excused.)

21 CHAIRPERSON MILLER: Okay. Do you
22 rest your case? Have you finished moving

1 anything, everything you wanted --

2 MS. STERLING: Yes.

3 CHAIRPERSON MILLER: -- into
4 evidence? Okay. Good. Okay. Closing?

5 MR. O'BRIEN: I don't want to
6 repeat myself. My closing has been in the
7 form of my cross-examination we will submit on
8 the record.

9 CHAIRPERSON MILLER: Okay. Thank
10 you very much.

11 MS. STERLING: Mr. Cherry has made
12 many promises regarding trash and vermin
13 control, peace, order and quiet issues and
14 noise. Without these promises being included
15 in a Board Order as conditioned for a license,
16 our experience has taught us that they just
17 will remain promises.

18 We need these promises to be
19 enforceable provisions of his license and we
20 have the conditions that we request here from
21 public space and trash, rat and vermin
22 control, and noise.

1 MR. O'BRIEN: And my rebuttal is,
2 as I said before, that's what this case is all
3 about. It's their consistence that he knuckle
4 under to a handful of people, not 60, four,
5 and do as they say to do or we are going to
6 make your life difficult.

7 We are going to wait until the 45th
8 day and then insist that you be replacarded.
9 This application was filed back in September.
10 It is totally innocuous. This business is
11 innocuous. I submit and poise this for the
12 Board to determine whether Mr. Cherry is a
13 credible witness as to the measures he takes
14 to run a responsible establishment.

15 But this is all about a power
16 trip.

17 MS. STERLING: It's actually --

18 MR. O'BRIEN: He has got the ANC,
19 which is elected to protect the interests of
20 their citizens, affirmatively supporting this
21 and you have got a handful of people under the
22 guise of a corporation trying to assert

1 themselves and force him to, as I said before,
2 genuflect in front of them.

3 He has my admiration for not
4 knuckling under to that.

5 CHAIRPERSON MILLER: Thank you.
6 Okay. So the record is now closed. Do
7 parties wish to file proposed findings of
8 facts and conclusions of law or waive your
9 right to do so?

10 MR. O'BRIEN: I'm willing to waive
11 our right to do so.

12 CHAIRPERSON MILLER: Okay.

13 MS. STERLING: We can waive.

14 CHAIRPERSON MILLER: You waive as
15 well. Okay. So one more time with feeling,
16 I'm going to read the instructions for us to
17 take a vote and consider this case in closed
18 session pursuant to the Open Meetings Act.

19 And as Chairperson of the
20 Alcoholic Beverage Control Board for the
21 District of Columbia and in accordance with
22 Section 405 of the Open Meetings Amendment Act

1 of 2010, I move that the ABC Board hold a
2 closed meeting for the purpose of seeking
3 legal advice from our counsel on Case No. 14-
4 PRO-00009, Amsterdam Falafelshop, per Section
5 405(b)(4) of the Open Meetings Amendment Act
6 of 2010, and deliberating upon this case for
7 the reasons cited in Section 405(b)(13) of the
8 Open Meetings Amendment Act of 2010.

9 Is there a second?

10 MEMBER BROOKS: Second.

11 CHAIRPERSON MILLER: Mr. Brooks
12 has seconded the motion. I'll now take a roll
13 call vote on the motion now that it has been
14 seconded.

15 Mr. Brooks?

16 MEMBER BROOKS: I agree.

17 CHAIRPERSON MILLER: Mr. Alberti?

18 MEMBER ALBERTI: I agree.

19 CHAIRPERSON MILLER: Mr.
20 Rodriguez?

21 MEMBER RODRIGUEZ: I agree.

22 CHAIRPERSON MILLER: Ms. Miller

1 agrees.

2 Mr. Short?

3 MEMBER SHORT: I agree.

4 CHAIRPERSON MILLER: Mr. Jones?

5 MEMBER JONES: I agree.

6 CHAIRPERSON MILLER: Okay. It
7 appears the motion has passed by a 6-0-0 vote.

8 I hereby give notice that the ABC
9 Board will hold a closed meeting in the ABC
10 Board conference room to deliberate this
11 matter pursuant to the Open Meetings Amendment
12 Act of 2010. And we will issue a written
13 order within 60 days, as this is a new
14 application.

15 Okay.

16 MR. O'BRIEN: Thank you.

17 CHAIRPERSON MILLER: You may be
18 excused. Thank you very much. Have a good
19 night.

20 (Whereupon, the Protest Hearing in
21 the above-entitled matter was concluded at
22 8:33 p.m.)

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